

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:)	
)	
GARLOCK SEALING TECHNOLOGIES)	
LLC, et al,)	No. 10-BK-31607
)	
Debtors.)	VOLUME I-A
)	MORNING SESSION

TRANSCRIPT OF ESTIMATION TRIAL
BEFORE THE HONORABLE GEORGE R. HODGES
UNITED STATES BANKRUPTCY JUDGE
JULY 22, 2013

APPEARANCES:

On Behalf of Debtors:

GARLAND S. CASSADA, ESQ.
Robinson Bradshaw & Hinson, PA
101 North Tryon Street, Suite 1900
Charlotte, North Carolina 28246

JONATHAN C. KRISKO, ESQ.
Robinson Bradshaw & Hinson PA
101 North Tryon Street, Suite 1900
Charlotte, North Carolina 28246

LOUIS ADAM BLEDSOE, III, ESQ.
Robinson Bradshaw & Hinson PA
101 North Tryon Street, Suite 1900
Charlotte, North Carolina 28246

RICHARD C. WOLF, ESQ.
Robinson Bradshaw & Hinson, PA
101 North Tryon Street, Suite 1900
Charlotte, North Carolina 28246

APPEARANCES (Continued):

On Behalf of the Debtors:

RAY HARRIS, ESQ.
Schachter Harris, LLP
400 East Las Colinas Blvd.
Irving, Texas 75039

CARY SCHACHTER, ESQ.
Schachter Harris, LLP
400 East Las Colinas Blvd.
Irving, Texas 75039

C. RICHARD RAYBURN, JR., ESQ.
Rayburn Cooper & Durham, PA
227 West Trade Street, Suite 1200
Charlotte, North Carolina 28202

SHELLEY KOON ABEL, ESQ.
Rayburn Cooper & Durham, PA
227 West Trade Street, Suite 1200
Charlotte, North Carolina 28202

ALBERT F. DURHAM, ESQ.
Rayburn Cooper & Durham, PA
227 West Trade Street, Suite 1200
Charlotte, North Carolina 28202

ROSS ROBERT FULTON, ESQ.
Rayburn Cooper & Durham, PA
227 West Trade Street, Suite 1200
Charlotte, North Carolina 28202

JOHN R. MILLER, JR., ESQ.
Rayburn Cooper & Durham, PA
227 West Trade Street, Suite 1200
Charlotte, North Carolina 28202

ASHLEY K. NEAL, ESQ.
Rayburn Cooper & Durham, PA
227 West Trade Street, Suite 1200
Charlotte, North Carolina 28202

WILLIAM SAMUEL SMOAK, JR., ESQ.
Rayburn Cooper & Durham, PA
227 West Trade Street, Suite 1200
Charlotte, North Carolina 28202

APPEARANCES (Continued.):

On Behalf of Interested Parties:

Carson Protwall LP:

JULIE BARKER PAPE, ESQ.
Womble Carlyle Sandridge & Rice, PLLC
P.O. Drawer 84
Winston-Salem, North Carolina 27102

Coltec Industries Inc.:

DANIEL GRAY CLODFELTER, ESQ.
Moore & Van Allen, PLLC
100 North Tryon Street, Suite 4700
Charlotte, North Carolina 28202-4003

HILLARY B. CRABTREE, ESQ.
Moore & Van Allen, PLLC
100 North Tryon Street, Suite 4700
Charlotte, North Carolina 28202-4003

MARK A. NEBRIG, ESQ.
Moore & Van Allen, PLLC
100 North Tryon Street, Suite 4700
Charlotte, North Carolina 28202-4003

EDWARD TAYLOR STUKES, ESQ.
Moore & Van Allen, PLLC
100 North Tryon Street, Suite 4700
Charlotte, North Carolina 28202-4003

Creditor Committees:

Official Committee of Asbestos Personal Injury Claimants:

LESLIE M. KELLEHER, ESQ.
Caplin & Drysdale, Chartered
One Thomas Circle NW, Suite 1100
Washington, DC 20005

JEANNA RICKARDS KOSKI, ESQ.
Caplin & Drysdale, Chartered
One Thomas Circle NW, Suite 1100
Washington, DC 20005

APPEARANCES (Continued.):

Official Committee of Asbestos Personal Injury Claimaints:

JEFFREY A. LIESEMER, ESQ.
Caplin & Drysdale, Chartered
One Thomas Circle NW, Suite 1100
Washington, DC 20005

KEVIN C. MACLAY, ESQ.
Caplin & Drysdale, Chartered
One Thomas Circle NW, Suite 1100
Washington, DC 20005

TODD E. PHILLIPS, ESQ.
Caplin & Drysdale, Chartered
One Thomas Circle NW, Suite 1100
Washington, DC 20005

TREVOR W. SWETT, ESQ.
Caplin & Drysdale, Chartered
One Thomas Circle NW, Suite 1100
Washington, DC 20005

JAMES P. WEHNER, ESQ.
Caplin & Drysdale, Chartered
One Thomas Circle NW, Suite 1100
Washington, DC 20005

ELIHU INSELBUCH, ESQ.
Caplin & Drysdale, Chartered
600 Lexington Avenue, 21st Floor
New York, New York 10022

NATHAN D. FINCH, ESQ.
Motley Rice, LLC
1000 Potomac Street, NW, Suite 150
Washington, DC 20007

GLENN C. THOMPSON, ESQ.
Hamilton Stephens Steele & Martin
201 South College Street, Suite 2020
Charlotte, North Carolina 28244-2020

TRAVIS W. MOON, ESQ.
Moon Wright & Houston, PLLC
227 West Trade Street, Suite 1800
Charlotte, North Carolina 28202

APPEARANCES (Continued.):

Official Committee of Asbestos Personal Injury Claimaints:

RICHARD S. WRIGHT, ESQ.
Moon Wright & Houston, PLLC
226 West Trade Street, Suite 1800
Charlotte, North Carolina 28202

ANDREW T. HOUSTON, ESQ.
Moon Wright & Houston, PLLC
227 West Trade Street, Suite 1800
Charlotte, North Carolina 28202

SCOTT L. FROST, ESQ.
Waters Kraus, LLP
222 North Sepulveda Boulevard, Suite 1900
El Segundo, California 90245

JONATHAN A. GEORGE, ESQ.
Waters Kraus, LLP
3219 McKinney Avenue
Dallas, Texas 75204

Future Asbestos Claimaints:

KATHLEEN A. ORR, ESQ.
Orrick, Herrington & Sutcliffe, LLP
1152 15th Street, N.W., Columbia Center
Washington, DC 20005-1706

JONATHAN P. GUY, ESQ.
Orrick, Herrington & Sutcliffe, LLP
1152 15th Street, N.W., Columbia Center
Washington, DC 20005-1706

Official Committee of Unsecured Creditors:

DEBORAH L. FLETCHER, ESQ.
FSB Fisher Broyles, LLP
6000 Fairview Road, Suite 1200
Charlotte, North Carolina 28210

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

OPENING STATEMENTS BY THE DEBTORS:

Mr. Cassada	10/43
Mr. Harris	15

* * * * *

OPENING STATEMENTS BY COLTEC INDUSTRIES:

Mr. Clodfelter	75
----------------	----

* * * * *

OPENING STATEMENTS BY FUTURE CLAIMANTS COMMITTEE:

Mr. Guy	86
---------	----

* * * * *

1 P R O C E E D I N G S

2 JULY 22, 2013, COURT CALLED TO ORDER 9:30 A.M.:

3 MORNING SESSION:

4 THE COURT: Good morning, have a seat.

5 We're here for the beginning of the estimation
6 hearing. Let me ask you all to, I guess, first to announce
7 your appearances so that the court reporter will have your
8 names. And I will warn you that during the course of the
9 hearing if she does not recognize your name, she will
10 interrupt and remind you so that she has it properly in the
11 transcription.

12 So why don't we start over here and go around that
13 way.

14 MR. GUY: Good morning, Your Honor.

15 Jonathan Guy for the FCR. I'm here with my
16 colleague Kate Orr and Richard Wyron.

17 MR. SWETT: Good morning, Your Honor.

18 Trevor Swett along with Elihu Inselbuch and James
19 Wehner for the Official Committee of Asbestos Personal Injury
20 Claimants. Tom Moon, our Charlotte counsel, is also with us.

21 THE COURT: Okay.

22 MR. CASSADA: Good morning, Your Honor.

23 I'm Garland Cassada with the law firm Robinson,
24 Bradshaw and Hinson, appearing today for the debtors. I'm
25 accompanied by two of my partners Jonathan Krisko and Rich

Laura Andersen, RMR 704-350-7493

1 Worf. There are several other members of my firm in the
2 gallery, but I won't introduce them separately.

3 MR. HARRIS: Good morning, Your Honor.

4 I'm Ray Harris for the debtors. I'm joined by my
5 partner Cary Schachter, Lori Fay and my associate Edward
6 Taylor.

7 MR. CLODFELTER: Good morning, Your Honor. Dan
8 Clodfelter from Moore and Van Allen. We represent Coltec
9 Industries. I'm accompanied this morning by my partner Mark
10 Nebrig and Hillary Crabtree.

11 MR. RAYBURN: Good morning, Your Honor.

12 Rick Rayburn, Jack Miller; Rayburn, Cooper, debtor's
13 counsel.

14 THE COURT: Okay. Well good. All right.

15 We will begin however you all want to start. Do you
16 want to make opening statements?

17 MR. CASSADA: Yes, Your Honor. I've conferred with
18 Mr. Swett. I believe for both -- each side will make an
19 opening statement. On our side, the debtors and Coltec will
20 spend about an hour and a half previewing the evidence that
21 you will hear over the next three weeks. I understand the
22 committee and the futures representative will do the same.

23 THE COURT: All right.

24 MR. CASSADA: Before we begin, Your Honor, I might
25 bring up a housekeeping matter, and that is that we have filed

1 a motion to de-designate certain items that have been
2 designated as confidential, that's not confidential. I
3 understand that Your Honor's going to hear that motion
4 tomorrow.

5 We will be disclosing and displaying in this public
6 court, items that have been designated, and testimony that has
7 been designated as confidential.

8 Under the stipulated protective order, as we
9 understand it, the court will have to close the courtroom to
10 the public when we do that. That will happen in our opening
11 statement, some time toward the latter part of our opening
12 statement.

13 I suppose the first order of business will be to
14 determine whether the court, the judge, you should actually
15 close the courtroom during opening statements.

16 I will say that there are a number of folks here who
17 are from EnPro Industries and the debtor. These are folks who
18 are parties and interested in the case. They have each signed
19 a joinder to the confidentiality order, so I believe they can
20 remain in the courtroom.

21 There are a number of other people here who I don't
22 know. I don't know if they are party to the protective order
23 or not.

24 MR. SWETT: Your Honor, I had understood from some
25 correspondence from the court before this morning that you

1 would prefer to hear the confidentiality motion tomorrow. And
2 if that's the case, then I suggest that we proceed as
3 Mr. Cassada described, and clear the courtroom where matters
4 that have been designated as confidential by parties in
5 interest or others, third parties included, who are not
6 present and not able here to assert their own rights, in
7 deference to the obligations that the debtors incurred in a
8 series of confidentiality stipulations, we really have no
9 alternative but to abide by that procedure and clear the
10 courtroom at the necessary times, unless and until you take up
11 that motion and decide on some other course.

12 But it is a serious problem, because there are lots
13 of people implicated by those confidentiality rights who are
14 not here and do not have notice of the motion.

15 THE COURT: Why don't we take up that motion
16 tomorrow morning at 8:30 here. And then for now, when you
17 get -- let's leave things open as long as we can. When you
18 get ready to get into things that would be governed by the
19 confidentiality agreement, just tell us and we will ask those
20 who haven't signed an agreement to leave for that period of
21 time. Okay?

22 MR. CASSADA: That works.

23 THE COURT: I think we're obliged to do it as
24 narrowly as we can, as long as we have to do it. Okay?

25 MR. CASSADA: Your Honor, I should start by telling

1 you how we hope the day proceeds today. We will make an
2 opening statement, we expect to be in the neighborhood of an
3 hour and a half. You'll hear from me, obviously.

4 In addition, Mr. Harris will address part of the
5 evidence that you'll hear during the trial. Mr. Clodfelter
6 will make a statement as well. We are hoping that after the
7 committee and the futures representative make opening
8 statements, that we will be at that point at the lunch break,
9 and that we will be able to return after lunch and put two
10 witnesses on the stand and get them completed today. That is
11 our hope. We've given notice of those witnesses to the
12 committee and the futures representative.

13 Your Honor, Garlock is in bankruptcy, not because
14 large numbers of claimants have meritorious claims against it,
15 but because of the financial burden of defending itself -- but
16 because of the mass burden of defending itself in mass
17 asbestos litigation.

18 You will hear that Garlock spent approximately \$1
19 billion to resolve hundreds of thousands of non-malignant
20 claims, produced by recruiting practices that everyone now
21 concedes were rife with abuse. This abuse bankrupted the
22 large thermal insulation producers whose products are
23 responsible for causing disease, and workers who now make
24 claims against Garlock.

25 There is no dispute today that non-malignant claims

1 have no material value, and that Garlock's liability turns on
2 mesothelioma claims.

3 Accordingly, we're here today to estimate Garlock's
4 aggregate mesothelioma liability for allowance purposes under
5 Code Section 502(c). The core dispute is whether we look at
6 legal liability head on by assessing the number and amount of
7 valid claims under state law, or that we look indirectly for
8 liability that is allegedly baked into Garlock's past
9 settlements.

10 Your Honor, we offer the first approach, which we
11 believe is the correct approach under the bankruptcy code.

12 Our initial evidence, of course, will address our
13 approach, based on evidence gathered through the questionnaire
14 process and other discovery ordered by the court. Our first
15 witnesses will address the merits of cases that claimants can
16 present against Garlock.

17 The evidence shows that even the best cases
18 claimants can muster, would fail to produce evidence
19 satisfying the standards required to reach a jury on the issue
20 of causation under applicable law.

21 The *Moeller* case against Garlock exemplifies the
22 application of law. The plaintiff was a pipefitter who
23 routinely installed and removed gaskets. Like all
24 pipefitters -- gasket -- he worked around asbestos insulation.
25 That pipefitter's gasket exposure was in the words of Judge

1 Alice M. Batchelder, who was the chief judge of the Sixth
2 Circuit Court of Appeals, "a bucket in the ocean compared to
3 exposures of asbestos thermal insulation." Accordingly, as a
4 matter of law, the case did not merit a jury trial. And Judge
5 Batchelder ruled that the *Moeller* case never should have gone
6 to jury.

7 In the second phase of our case, Dr. Bates will
8 provide a conservative upper bound that the court can safely
9 accept as more than adequate compensation for current
10 mesothelioma claims.

11 Our economic evidence will show that -- will show
12 what Garlock's legal responsibility would be, assuming
13 contrary to both fact and law that first, every claimant,
14 every current and future mesothelioma claimant was able to
15 identify contact with a Garlock product, will be permitted to
16 proceed to trial and potential judgment.

17 And second, that no claimant's causation evidence
18 will be excluded under *Daubert*, making these highly claimant
19 friendly assumptions, Garlock's estimated liability for
20 current and future mesothelioma claims under state law is no
21 more than \$125 million.

22 Because our plan provides \$270 million to resolve
23 claims, Dr. Bates will explain how the plan provides
24 sufficient compensation to fully satisfy all claims.

25 Of course this is consistent with what medical

1 research has discovered long ago, that workers' exposure to
2 friable amphibole insulation, not gaskets, caused
3 mesothelioma.

4 Now, in addition to presenting evidence on our case
5 based on legal liability, we'll present evidence about why the
6 settlement history approach advocated by the committee and the
7 futures representative is inappropriate in Garlock's case.

8 That approach of course has been used in past cases
9 by agreement of the parties, and usually when liability was
10 not contested by the debtor. Most recently a version of that
11 approach was used in the *Bondex* case. But this case is not
12 *Bondex* or any other asbestos case.

13 First, the parties agreed to use settlement data in
14 the estimation trial in that case. Second, the joint compound
15 produced by *Bondex* was friable, and banned by the consumer
16 product safety commission in 1970s. Leading medical
17 researchers pronounced decades ago that asbestos-containing
18 gaskets and packing posed no health risk. But what caused
19 disease was the ubiquitous asbestos-containing insulation
20 present in environments where gaskets were used.

21 Gaskets and packing have never been banned. Not
22 only are the record and Garlock's positions different, but
23 critical facts are different as well.

24 The evidence will show that Garlock settled the vast
25 majority of cases because it was cheaper to settle than to pay

1 lawyers to try cases.

2 In a relatively small number of cases controlled by
3 a relatively small number of law firms, Garlock paid larger
4 settlements based on incomplete factual records.

5 The evidence will show that firms securing these
6 settlements often resorted to suppression of evidence to
7 enhance the trial risk against Garlock, precisely because
8 Garlock's having an extraordinarily good chance of securing a
9 defense verdict when all evidence relevant to the cause of
10 plaintiffs' diseases was available.

11 I will yield to Mr. Harris. He will address the
12 evidence that we will present addressing the merits of claims
13 against Garlock.

14 I'll follow and describe evidence that will support
15 Dr. Bates' econometric estimation of legal liability, and then
16 I'll conclude by forecasting our evidence that proves that the
17 settlement approaches offered by the committee and the FCR
18 lack merit. And then Mr. Clodfelter will summarize evidence
19 that Coltec will offer.

20 MR. HARRIS: Good morning, Your Honor.

21 THE COURT: Good morning.

22 MR. HARRIS: We firmly believe that no estimation of
23 Garlock's liability, no matter what method the court chooses
24 to use can be fair unless the court fully understands the
25 nature of two very different types of products.

Laura Andersen, RMR 704-350-7493

1 The first is asbestos thermal system insulation that
2 insulates pipes and fittings where gaskets can be used.

3 Exposures from working with asbestos insulation,
4 removing insulation, installing insulation, fabricating
5 insulation, are well above all current and historic exposure
6 standards.

7 Mesothelioma is a rare disease that afflicts maybe
8 only three -- two to three to four people per million, who
9 don't have exposure to friable asbestos products like
10 insulation.

11 You'll hear in this case about Dr. Irving Selikoff
12 who was a pioneer in alerting the world to the potential
13 dangers of working with asbestos products. He, in particular,
14 studied asbestos insulators. He ultimately demonstrated that
15 9 percent of the insulators who worked with asbestos
16 insulation, died of mesothelioma; 9 percent, versus three to
17 4 million without exposure to friable asbestos products.

18 The insulation was so dangerous that it was
19 banned -- spray on insulation banned in 1973, and the pipe
20 covering that you see here was banned in 1975.

21 Johns-Manville, UNARCO, Owens Corning Fiberglass,
22 Pittsburgh Corning, Armstrong, AC&S, the list goes on, of
23 insulation manufacturers or distributors that were defendants
24 in the asbestos litigation.

25 Garlock never made asbestos thermal insulation.

1 Garlock made gaskets where the asbestos was mixed with rubber
2 and pressed into sheets.

3 In contrast to insulation, this shows Fred
4 Boelter -- who is an expert witness for Garlock that you'll
5 see here either tomorrow or the next day -- working with
6 gaskets is very, very -- are very, very different than working
7 with insulation.

8 Every reliable study that's been done with respect
9 to asbestos gaskets, shows that the exposures are well below
10 not only the historic standards, but also the current
11 standards, including a very comprehensive systematic study by
12 the United States Navy back in 1978.

13 This is a list of studies that are published in the
14 literature. On the far right-hand side is the short-term
15 exposure limit that OSHA adopted in 1972. And then the
16 current OSHA short-term exposure limit that was adopted in
17 1988. Studies by the United States Navy, the first
18 peer-reviewed paper with respect to asbestos gaskets that
19 appeared in the literature was in 1991. Industrial hygiene
20 community just wasn't focused on gaskets. So that's the first
21 paper, one of the few papers that were published that had
22 nothing to do with defendants or plaintiffs in asbestos
23 litigation.

24 The later studies are by Fred Boelter and Larry
25 Liukonen. Both of them will testify in this case.

1 Mr. Liukonen published in 2004, but he's also the lead author
2 of the Navy study.

3 In contrast, these are the insulation studies, or a
4 number of the insulation studies. There's the 10 fiber cc
5 limit from 72 from the prior slide. As you can see the
6 insulation studies far exceed that, and the exposures are tens
7 to hundreds to thousands of times higher than the current
8 exposure limit.

9 And Dr. Selikoff, who was the leader of alerting the
10 world to the hazards of asbestos, his work, particularly with
11 insulators, led to the creation of OSHA, said in 1978 in a
12 book that he wrote for the purpose of summarizing the
13 literature for lay people and specialists alike, says, high
14 temperature jointing and packing materials, no health hazards
15 in forms used in shipyard applications.

16 These gaskets that were used in shipyard
17 applications are the same types of gaskets that Garlock sold
18 for use in industry.

19 Nearly every claimant who worked with a Garlock
20 asbestos gasket or packing, would have had exposure to the
21 friable insulation, because they're working in the same spaces
22 where it is and the pipes and fittings are covered with the
23 insulation where the gaskets and packing are. That insulation
24 exposure explains their disease.

25 We're not asking the court to decide the merits of

1 any individual claim, or decide any scientific issues here.
2 We ask only that the court estimate our legal liability. This
3 will involve estimating how many cases would reach a jury
4 under the federal rules of evidence, and for those that do,
5 what is the likelihood of its success.

6 In an asbestos trial, the plaintiff has the burden
7 of proof and the burden of persuasion on many issues. They
8 have to prove that the product is defective. And in some
9 states they have to prove that the manufacturer knew or should
10 have known about the potential dangers associated with the
11 product.

12 For this trial we're focused only on one issue, and
13 that's specific causation. That requirement is universal
14 among all states. The plaintiffs must be able to prove, with
15 admissible evidence, that Garlock's products were a
16 substantial cause of the claimant's disease.

17 Claims should not reach a jury on this issue because
18 the claimants cannot show that the exposure from Garlock's
19 gaskets and packing was significant, compared to the
20 claimant's other exposures.

21 In the *Moeller* case that Mr. Cassada mentioned a
22 moment ago illustrates this issue. As he quoted the Sixth
23 Circuit. The Court -- as he quoted the Sixth Circuit, the
24 Sixth Circuit said -- this was a case we tried in federal
25 court in Kentucky. Garlock lost at trial but appealed, and

1 the Sixth Circuit said the case should not have gone to the
2 jury. This is a case -- this was a very typical case,
3 pipefitter case, the type of occupation that has the most
4 contact with asbestos gaskets and packing.

5 We call the cases and the claims as they are -- as
6 they shouldn't make typical claims like this, they shouldn't
7 make it to the jury, the *Moeller Filter*.

8 To show you what the typical claims look like
9 against Garlock for estimation purposes, we used the
10 information from the questionnaire process. They yielded a
11 vast amount of information about the evidence the claimants
12 will be able to present about themselves when they ultimately
13 have to prove their claims.

14 Our experts have done what science does in making
15 determinations about disease causation and predictions about
16 groups of people. They analyze the data, group the population
17 by the relevant characteristics, and then applied the tools of
18 exposure science and industrial hygiene to understand the
19 nature of the exposures -- conducted in exposure assessment,
20 and then applied medical science to evaluate the information.

21 We've asked John Henshaw, an industrial hygienist to
22 review the data submitted by the current claimants.
23 Mr. Henshaw is a long time leader in the industrial hygiene
24 community, past president of the American Industrial Hygiene
25 Association, and the former head of OSHA.

Laura Andersen, RMR 704-350-7493

1 Mr. Henshaw grouped the likely claimants by the
2 similarity of their contact with gaskets and packing. He
3 divided them into five groups. I've illustrated four groups
4 here.

5 Group one are those claimants that would have had
6 occupations that had the most contact with gaskets and
7 packing. Those are the pipefitters, the steamfitters, the
8 plumbers, the Navy machinist mate. Those are the primary
9 occupations.

10 In group two, they don't have quite as much contact
11 with gaskets and packing but it's still part of the regular
12 work they do on a regular basis, boiler workers, shipyard
13 workers, Navy firemen.

14 Group three has very little contact with gaskets and
15 packing, electricians, machinists, laborers, but they are
16 around the people in the trades that are doing that type of
17 work.

18 And then group four is more remote, painters,
19 insulators, clerical workers, office workers.

20 Group five, which is not depicted, are people that
21 wouldn't have any contact at all with gaskets or packing,
22 wouldn't be around people that would do any work with gaskets
23 and packing.

24 The court may recall from the questionnaire process
25 that the claimants were asked to categorize themselves by

1 their industry and their occupation. So that led to more than
2 1,000 combination of industry and occupations.

3 Group five also includes those individuals where the
4 combinations don't make any sense, like a bricklayer in the
5 Navy.

6 Mr. Henshaw's grouping of the claimants is
7 definitive. The claimants or the ACC has identified one
8 certified industrial hygienist may testify in this case, his
9 name is John Templin. We asked him specifically about
10 Mr. Henshaw's grouping of the occupations, based upon their
11 contact with gaskets and packing. He said, nothing being left
12 out of them as being nothing wrong.

13 Mr. Henshaw next evaluated the exposures expected in
14 each group using the principles of industrial hygiene, relying
15 on the information supplied from the questionnaire process,
16 and what the literature reports about the exposures that these
17 individuals would have.

18 Now the committee's response initially has been that
19 this process is illegitimate, that it isn't science. But as
20 the court is aware, the Federal Judicial's Center manual on
21 scientific evidence has a chapter on Exposure Science. It's
22 written by Dr. Joseph Rodricks, a well-known toxicologist.
23 We've engaged Mr. Rodricks, he reviewed Mr. Henshaw's
24 analysis, and said this is precisely the kind of exposure
25 science and methodology that's contemplated by the guide.

Laura Andersen, RMR 704-350-7493

1 Mr. Henshaw's evaluation of the exposures by group,
2 provides the following data that ties into the *Moeller* issues,
3 the bucket in the ocean. These are example occupations from
4 within each group, the pipefitters from group one, the boiler
5 worker from group two, the electrician from group three, and
6 the painter from group four. The red circles represent an
7 estimate of insulation exposure. The blue dots represent
8 estimates of gaskets and packing exposure.

9 The standard measure for estimating cumulative
10 exposure is fiber per cc years. You'll hear that when they
11 collect measurements -- when industrial hygienists collect
12 measurements in the workplace of exposure, it's measured in
13 fibers per cc. That's converted -- an eight hour average is
14 determined by an eight hour or long term sample, and that
15 average exposure during the day is regarded as one fiber per
16 cc year. So if someone was exposed to two fibers per cc, as
17 an eight hour time rate average, at the end of one year, 250
18 workdays, they would have two fiber cc years of cumulative
19 exposure.

20 Throughout his analysis, Mr. Henshaw made very
21 conservative assumptions or proclaiant assumptions. For
22 example, for the insulation exposure, we know that pipefitters
23 and we know that boiler workers have exposure to insulation
24 that's not related to the work that also involves gaskets and
25 packing. They're bystanders to insulators removing

1 insulation. They testified about it extensively.

2 You'll hear about testimony or you'll see testimony
3 where people described how it's a snowstorm when they're
4 around the insulators, and the insulators work right above
5 them and the insulation rains down on top of them. You could
6 see how easily it would be if someone's removing insulation
7 next to you while you're trying to do your work, that you
8 would also be exposed to insulation.

9 Mr. Henshaw did not include that insulation exposure
10 in his estimates. This is only for the work that goes along
11 with removing and when replacing asbestos gaskets.

12 For the gasket assumptions, his assumptions are
13 equally conservative. The blue dot represent all the gasket
14 and packing exposure, not just Garlock exposure. There was no
15 effort to try to determine Garlock's market share. But as
16 you'll hear in the Navy, there are many, many manufacturers of
17 asbestos gaskets and packing that were on the qualified
18 products list that could sell. Plaintiffs typically identify
19 two, three, four, five different types of gaskets and packing.
20 Garlock did not control or did not have majority of the market
21 share. In fact, the largest market share belonged to
22 Johns-Manville during the '40s, '50s and '60s. Johns-Manville
23 made basically 60 percent of just about every asbestos
24 product, particularly insulation, but also gaskets and
25 packing. As you can see there's an orders of magnitude

1 difference. So it's clear -- or it appears obvious that the
2 insulation exposure would explain the claimant's disease.

3 We then asked Dr. David Weill to review Mr.
4 Henshaw's analysis and explain its medical significance in
5 terms of substantial cause. Dr. Weill is the director of the
6 Center of Advanced Lung Disease at Stanford University Medical
7 Center.

8 Even in the group one claimants with the most
9 contact with gaskets and packing, Dr. Weill explains that the
10 gasket and packing exposure would not be a significant cause
11 of disease, or would not be a substantial cause of disease.

12 For the claims in groups two, three and four and
13 five, the claims become even weaker.

14 None of the claims should make it through the
15 *Moeller* Filter, the bucket in the ocean filter.

16 And this assumes that each of the fiber types are
17 equally potent and they're not. You've heard about the so
18 called chrysotile defense, or whether chrysotile is a cause of
19 mesothelioma. The vast majority of the gaskets Garlock made
20 were made with chrysotile asbestos. A very small percentage
21 were made with an amphibole asbestos known as crocidolite.

22 Our doctors will explain the differences between
23 these fiber types. They come from two different families.
24 The serpentine -- asbestos is basically -- is actually a
25 commercial term, it's not necessarily a mineralogical term.

Laura Andersen, RMR 704-350-7493

1 It's a commercial term to describe fibrous minerals rocks that
2 you break them open and there are fibrous minerals inside,
3 that are resistant to fire, heat, acid.

4 Chrysotile's in the serpentine family. The
5 amphibole family has several members, some were used
6 commercially, some were not. The important commercial ones
7 were amosite and crocidolite. Amosite was frequently used in
8 insulation crocidolite was too.

9 The vast majority of Garlock's gaskets were made
10 with chrysotile, and that's where the claims against Garlock
11 typically arise.

12 There's been studies over the years on different
13 cohorts, different factors, different groups of people studied
14 to determine whether they have an increased risk of disease.
15 And in particular, they report the increased risk of disease
16 from mesothelioma.

17 As you can see, the highest and greatest potential
18 for disease is cigarette factory workers, gas mask factory
19 workers where they were using crocidolite.

20 Insulators, though, also have a very high risk of
21 mesothelioma. It's identified 10 percent -- or, I'm sorry,
22 9.4 percent. I believe that's from Dr. Selikoff's study.

23 But as you move your way down and you start looking
24 at just the chrysotile only studies, there are more than a
25 dozen cohorts of large-scale studies of individuals who worked

1 factories, in mines, and mills, who had massive exposure to
2 chrysotile, and no increased risk of mesothelioma.

3 This doesn't include the case controlled studies --
4 some of the case controlled studies that involve people that
5 work with chrysotile products that would have made this list
6 even longer.

7 Over the last 10 to 15 years, there's been two major
8 quantitative risk assessments done to try to determine the
9 relative potency of the fiber types.

10 In 2000, Hodgson and Darnton who worked for the
11 Health and Safety Executive in Great Britain, Great Britain's
12 version of OSHA, estimated that the relative potency of the
13 fiber types was 500 for chrysotile, amosite 100, chrysotile 1.

14 Berman and Crump working in connection with the EPA,
15 estimated that the exposure was much -- the relative exposure
16 was in the hundreds to even over a thousand times more potent
17 for the amphiboles versus the chrysotile.

18 Even Dr. Brody, one of the experts that the
19 committee will call in 2006, estimated that the relative
20 potency between amosite and chrysotile was 500 to 1.

21 As the court has said, we're not asking the court to
22 determine whether chrysotile is a cause of mesothelioma. But
23 relative potency is important, if chrysotile is potent at all.

24 So Dr. Weill in estimating or analyzing the medical
25 significance of the information that Mr. Henshaw prepared,

1 factored in potency. And taking in the potency factor for one
2 of the examples of the pipefitter assuming that -- factoring
3 in the amosite components of the insulation, the ocean gets
4 even bigger.

5 We find it telling that the committee and the FCR
6 have not focused on the actual evidence in this case. The
7 evidence that was submitted by the current claimants.

8 Their expert, Dr. Brodken, acknowledges that this
9 approach is scientifically valid and can be helpful. We asked
10 him in scientific research in asbestos disease, researchers
11 have looked at various groups of workers and considered them
12 collectively for making decisions, correct?

13 Certainly.

14 And in that context, especially, retrospective dose
15 reconstruction is quite helpful; is that correct?

16 I would agree with that.

17 But the committee doctors did not use this approach.
18 Instead they've advanced various versions of the
19 every-exposure-contributes theory. For a long time doctors
20 testifying for plaintiffs' lawyers would say that asbestos is
21 a cumulative disease -- a cumulative exposure disease, which
22 is true. But that every exposure contributes to cause it. So
23 any exposure from any product contributes to cause someone's
24 disease, and is therefore a substantial cause.

25 As courts started rejecting that, that theory got

1 modified a little bit and a new version emerged, that it was
2 every exposure above background exposure was a contributing
3 cause.

4 Courts have not rejected that as well. It's
5 rejected in many states. And in those states where they had
6 previously accepted that type of testimony, the courts are
7 starting to reject it; Pennsylvania is one.

8 Recently the highest court in Pennsylvania said, we
9 do not believe that it is a viable solution to indulge in a
10 fiction that each and every exposure to asbestos, no matter
11 how minimal, in relation to other exposures, implicates a fact
12 issue concerning substantial-factor causation.

13 That brings us to the second major point of emphasis
14 on our merits case, and that's whether the committee's
15 evidence passes through the *Daubert* filter.

16 Our focus is on the methodology that the committee's
17 expert followed, not just on their conclusions, and that's the
18 focus of *Daubert*.

19 Case law has rejected much of the methodology used
20 by the committee's experts, and our experts will explain the
21 science underlying the case law.

22 For example, the committee's expert's opinions on
23 specific causation rests largely on case reports. Dr. Welch,
24 in fact, uses a single case report of someone who likely
25 worked with an amphibole product as a foundation for a gasket

1 opinions.

2 Case reports are not studies with control groups.
3 There's no statistical significance to case reports, they're
4 anecdotes. They're a basis for a hypothesis, but they're not
5 evidence of causation. They raise questions for further
6 study. They don't answer the questions. And the law is
7 clear, that reliance on case reports are not permissible.

8 This is from a recent decision -- or from a decision
9 in this district. "Case reports are not scientific proof of
10 causation. Case reports fail to test a causal hypothesis, and
11 therefore cannot support a causation opinion."

12 The committee's experts repeatedly used public
13 health agency findings as evidence of causation as well.
14 They'll cite public health agency statements to support their
15 opinions that chrysotile causation of mesothelioma -- or for
16 chrysotile causation mesothelioma and low dose causation.

17 But public health agency's policies are based on
18 conservative assumptions, as the Supreme Court said, "risking
19 error on the side of overprotection."

20 Courts that have looked into this issue have
21 consistently rejected such statements as proof of causation.
22 A regulator's purpose is to suggest or make prophylactic rules
23 governing human exposure, from the preventive perspective,
24 that agencies adopt in order to reduce public exposure to
25 harmful substances. In doing so, the agency's threshold of

1 proof is reasonably lower than that in tort law.

2 The committee's experts will also and the
3 committee's lawyers will also speak about how public health
4 agencies have said that there's no safe level of exposure to
5 asbestos. But saying that there's no safe level of exposure
6 to asbestos is based upon risk assessments, extrapolations
7 from high dose studies to low dose exposures, in calculating a
8 risk. Those two have been rejected. That's not -- risk --
9 estimates of risk are not proof of causation. No safe level
10 addresses risk not cause, and there's a significant
11 distinction between those two concepts.

12 By offering -- this opinion is just from this year.
13 By offering opinions about risk, none of the plaintiff's other
14 experts have offered an opinion about what level of exposure
15 is sufficient to cause mesothelioma.

16 As I said earlier, the reliable studies on gaskets
17 and packing show that the exposures are well below, not only
18 the historic exposure limits, but also the current exposure
19 limits.

20 The committee's case on the fiber release for
21 gaskets is based on and built on the work of Dr. Longo. He's
22 on the right. He's a long-time witness for the plaintiff's
23 bar in asbestos cases. He has -- his results are far higher
24 than anything that's published in the literature.

25 But because his studies are done solely for the

1 purpose of litigation, his review of his studies requires --
2 or -- the law is clear that the courts may impose greater
3 rigor in the analysis of such studies. If a proposed expert
4 is a quintessential expert for hire, then it is well within
5 the trial judge's discretion to apply the *Daubert* factors with
6 greater rigor.

7 You can see the Navy study's on the left. The Chain
8 (phonetic) paper from 1991 in the middle. There's another
9 paper that appeared in peer-reviewed literature -- but peer
10 reviewed -- by McHenry and Moore (phonetic). The
11 Liukonen/Boelter papers, and then here comes Dr. Longo.

12 In his earlier studies he was glueing gaskets to a
13 metal plate and calling that a workplace simulation. Glueing
14 it to a metal plate and then scraping and wire brushing and
15 grinding away at the gasket. He drew a lot of criticism for
16 those types of studies saying they're not real workplace
17 simulations. Gaskets go on flanges of one type or another.
18 They're not glued down to a metal plate. And so he found old
19 flanges with old gaskets that have been out of service for
20 many, many years. And most recently in flanges that have been
21 out of service for 19 years, where the gaskets were dry,
22 brittle. It's not even clear that they were compressed,
23 asbestos sheet gaskets, which is what Garlock made and what
24 the claims are against Garlock are based on.

25 We'll identify for you, Your Honor, many, many

1 errors that Dr. Longo has followed. We took his deposition in
2 this case. Never before have we had the time to prepare for a
3 deposition with the full seven hours. And we identified on
4 just the full seven hours were about errors in the different
5 studies that he cited to the court that he had conducted.

6 We won't go through, obviously, all of those
7 studies when he takes -- all those problems when he takes the
8 stand.

9 But from a big picture standpoint, the first major
10 problem with Dr. Longo's studies are that they're not
11 realistic work practices. The glued gaskets is a good
12 example.

13 Then when you watch the studies, remember the
14 earlier video when Mr. Boelter was trying to get up underneath
15 the gasket to remove it.

16 Dr. Longo, and I think this is a video from where he
17 actually supposedly hired a steamfitter to remove these
18 gaskets. For whatever reason this person is chopping away at
19 gaskets. That's not the way the work is done.

20 Dr. Longo also employees these high speed grinders
21 in his studies, 11,000 RPM grinders. He has no evidence, no
22 record, he admits he has not done any research to determine
23 whether these high speed electric grinders were even available
24 in '40s '50s and '60s. Our research shows that they weren't.
25 But he's using these very high speed grinders and very

1 aggressive tools to generate the highest exposures.

2 Remember from his -- the charts of his gasket
3 studies, most recent gasket study bystander exposure was over
4 70 fibers per cc, almost 80 fibers per cc. That's almost
5 higher than knocking off the insulation that we saw at the
6 very beginning of my opening, knocking off the insulation. It
7 makes no sense.

8 This is a picture of Dr. Longo. He uses different
9 tools on his grinder. This is one of a brass wire brush. He
10 didn't realize it until we brought it out at his deposition
11 that the maximum safety rating for the very brass wire brush
12 that he used there was 7,000 RPM. He was using it at 11,000.
13 I asked him, well, is that a safety hazard. He said, well,
14 evidently not because no one got hurt. Well, that's not the
15 standard. That's not how you evaluate safety.

16 But it's an unrealistic work practice to think that
17 workers were using tools like this outside their maximum
18 safety rating.

19 He had an early problem -- we'll see about this in a
20 second -- about a grinder burning out. He said the problem
21 with the grinder burning out was that the wire brush was too
22 big for the guard, and it kept hitting the guard. And so in
23 the studies he takes the guard off the grinder. That doesn't
24 sound realistic.

25 You see sparks flying in his videos as if this is

1 some sort of typical work practice. Certainly those people
2 that worked in chemical plants, refineries, many industrial
3 facilities are not allowed to use electric grinders like this
4 and create this potential explosion or fire hazard.

5 This is the video, you'll see -- using these
6 aggressive techniques with the steel wire brush. These flange
7 faces typically have phonographic finishes where they have
8 little grooves that grip the gasket when they're tied
9 together. You wouldn't want to use these aggressive tools in
10 order to try to remove gasket material, because you risk
11 damaging the flange face. But of course he's not using these
12 flanges again. He's just trying to using them for his gasket
13 study.

14 You'll hear about how Dr. Longo did publish a paper
15 in the peer-reviewed literature in 2002. That's true it drew
16 criticism in industrial hygiene literature. We've taken his
17 deposition and we took his colleague's deposition. Dr. Longo
18 testifies regularly. He has a colleague, Mr. Hatfield, who
19 until the past year has testified for 10, 15 years for
20 Dr. Longo's company. He's got other colleagues that testify
21 as well.

22 But we took Mr. Hatfield's deposition. We
23 identified a number of problems in the quality control
24 procedures for the studies that were published in the
25 industrial hygiene literature. So we asked Mr. Hatfield about

1 this.

2 We said, do you have any plans to do another study
3 involving gaskets?

4 Yes.

5 Is this to fix the quality control problems with
6 your accounts?

7 Well, it's for a number of reasons.

8 Is that one of the reasons?

9 That is one of the reasons.

10 So when you hear the committee's lawyers or the
11 experts talk about Dr. Longo's published paper, understand
12 that they had to redo the study, redo the studies, do
13 subsequent studies to fix the quality control problems.

14 Ultimately what they -- of course every time they
15 drew criticisms and they did another study, the numbers go up.

16 Reproducibility is an important part of reviewing
17 any part of scientific experiment. Not only does Dr. Longo's
18 studies does not reproduce what's in the scientific
19 literature, but he can't reproduce his own work. They just
20 keep going up.

21 We're talking about gasket studies and the packing
22 studies where the exposures are measured in 10ths of a fiber
23 per cc, and his are ranging 10, 15, 25, 36, 77 fibers per cc.

24 Dr. Longo tries to normalize his data or make it
25 look normal by identifying or citing to sampling sheets.

1 These are actually handwritten sampling sheets that
2 plaintiffs' lawyers have collected over the years and sent
3 him. There's four, five, six of them that he cites to, just
4 basically notes. Not reports where the industrial hygienist
5 says, hey, I've done something important.

6 What's really telling about that is one of the first
7 ones that he always cites, relates to a sample that was
8 collected at Shell, a Shell refinery, where the purpose of the
9 study says they were trying to simulate the worst case
10 situation, and Dr. Longo's results are higher. Not a lot
11 higher, but they are significantly higher. So he says, well,
12 I have the same thing -- I got the same thing that Shell
13 reported. When Shell was trying to create something that was
14 not a typical work practice, a worst case situation.

15 But all of the flaws that we identified can't
16 explain this. Before we file for bankruptcy, this was the
17 highest sample that Dr. Longo ever got. You see that the
18 workers are wearing pumps. And those pumps are connected to
19 filters that are in the breathing zone of the worker. That's
20 how the industrial hygienist -- or that's how air samples are
21 collected. They forgot to turn the pumps on when they first
22 started the study and did the work. They're just realizing
23 this now.

24 The person on the right is Mr. Hatfield. He's going
25 to turn the pumps back on, and then they're going to go on a

1 rest period for 15 minutes. They're going to stand in the
2 corner and they're going to report 36 fibers per cc, much,
3 much, higher. Remember the standard -- the current standard
4 is one fiber per cc for short-term samples. The historic
5 sample was 10 fibers per cc. They're going to find 36 fibers
6 per cc for standing in the corner of a chamber. We can't
7 explain that.

8 Dr. Longo also used -- the numbers may not even be
9 that important to him. Well, it's been the feature of the
10 plaintiff's case against Garlock since the late 1990s and
11 throughout the 2000s are Tyndall lighting demonstrations.

12 This is Dr. Longo on the left removing a gasket
13 having scraped it and now using a wire brush, and they
14 generate what appears to be dust particles in the air. What's
15 happened is, they've turned the lights off in their chamber
16 and they shine a bright light through the breathing zone of
17 the worker. This creates what he calls the Tyndall effect.
18 And it looks scary.

19 Garlock cites to these studies that shows the
20 exposures from working with gaskets is very low, and then
21 Dr. Longo shows these videotapes and the plaintiffs' lawyer
22 says that Garlock says that this is a safe activity.

23 We'll show you evidence that you cannot tell whether
24 there's respirable asbestos fibers in the air during this
25 activity. But what's important here, is the person on the

1 right is wire brushing a flange without a gasket. Just the
2 activity of wire brushing creates dust under the Tyndall
3 light. In ambient light you can't see it, it's not like
4 insulation is pouring out. You can't see it under ambient
5 lights. But under the Tyndall lights everything looks dusty.
6 You set in a movie theater and seen the projector, the ribbon
7 of light that hits the screen, you see the dust in the air,
8 that's the Tyndall effect.

9 So when they talk about Tyndall lighting, if they
10 show you Tyndall lighting videos, understand that everything
11 looks dusty and dangerous under Tyndall lights.

12 I would like to wrap up by introducing you to the
13 witnesses that we're going to call.

14 Dr. Wasson is on the left, he's the first witness.
15 He started out in the boiler rooms of an aircraft carrier in
16 1961 as a young boiler officer. He progressed through the
17 ranks, ultimately became a captain. But he spent a lot of
18 time in boilers and firerooms on ships. He knows how asbestos
19 gaskets and packing were used in the real world, and he knows
20 how insulation was used. And he'll be our first witness that
21 we call after lunch.

22 Dr. Garabrant is our first witness, scientific
23 witness that we'll call. He's an epidemiologist, Professor
24 Emeritus from the University of Michigan, School of Public
25 Health. He'll explain based upon -- explain what epidemiology

1 is. Why it's important. Why it's a necessary component to
2 understanding disease causation and making predictions about
3 increased risk of disease. And he'll identify for us and walk
4 through the different occupations that are at increased risk,
5 and what is the nature of that work.

6 And we'll find, ultimately, I believe, that those
7 occupations that are at risk for disease from mesothelioma,
8 all have significant asbestos insulation exposures.

9 Our industrial hygiene experts consist of Larry
10 Liukonen and Dr. Still. They were two of the three authors of
11 the Navy study back in 1978. Mr. Liukonen went on to work for
12 the railroad and in private consulting, and is published in
13 the peer-reviewed literature on asbestos gaskets.

14 Fred Boelter is another -- Dr. Still went on to have
15 a very distinguished career in the Navy. He became a captain,
16 was in command of the Navy's toxicology laboratory.

17 Fred Boelter started out working for OSHA, as a OSHA
18 inspector. Went into private consulting. He's done a number
19 of gasket studies that have been published in the
20 peer-reviewed literature, at least two articles. But we also
21 asked him to do the assessment that you'll hear about on
22 insulations exposures.

23 What you'll find or what you'll hear, is that there
24 was not -- the insulation exposures that were in the
25 literature, involved -- typically involved work practices

1 involving lots of insulation. At one particular time there
2 wasn't specific data in the literature on what is the exposure
3 someone has when they remove just enough insulation to replace
4 a gasket. That's what Mr. Boelter studied. That was the
5 video that you saw at the beginning of our opening, and he'll
6 come and testify about that.

7 And John Henshaw was the former head of OSHA. He
8 did the analysis of the questionnaires.

9 Dr. Sporn is a Duke professor of pathology,
10 associate professor of pathology at Duke. His laboratory has
11 been a pioneer in looking at the lung tissues of individuals
12 with mesothelioma. And he'll be able to share with you what
13 they found in looking at those lung tissues, in particular,
14 what is the fiber type of asbestos that they found.

15 Dr. David Weill, reviewed and determined the medical
16 significance of the information that Mr. Henshaw analyzed.

17 We'll also call three witnesses that are very
18 specific to *Daubert* issues. Dr. Hesselink will testify about
19 the work he's done to look at this issue of what Dr. Longo
20 says you can see when you're looking at work activities under
21 Tyndall lighting.

22 I should say that Tyndall lighting is an important
23 issue. Evidently it was very -- it was persuasive to Judge
24 Fitzgerald in the *Bondex* decision. She cited it in her order.
25 But she cited it saying that just from looking at the video,

1 it looks like there's a large quantity of asbestos that even
2 bystanders would be exposed to.

3 In fact, Dr. Longo says, but it's hard to not to
4 believe your eyes. Dr. Longo says, well, you can't quantify
5 the exposure to asbestos from watching Tyndall lighting. You.
6 Absolutely can't. Because what Dr. Hesselink has demonstrated
7 and will share with the court, is that you cannot see respirable
8 asbestos fibers under the Tyndall light. They're microscopic
9 and you need a microscope to see microscopic particles.

10 Dr. Anderson was the founder, and I believe the
11 first director of the EPA's assessment group. The risk
12 assessment group at EPA that did the first risk assessment on
13 asbestos. She'll explain the proper use of public health
14 agency statements that underlie the decisions that say you
15 can't use public health agency's statements for causation.

16 Dr. Weed, former chief of preventive oncology at the
17 National Cancer Institute. He's an epidemiologist who's
18 published widely on the methods of determining causation.
19 He'll talk about the committee's experts' methodology as to
20 whether they've followed proper scientific methodology in
21 reaching their conclusions about either chrysotile or low-dose
22 causation.

23 Your Honor, we look forward to bringing our case to
24 you. Thank you.

25 THE COURT: Thank you.

Laura Andersen, RMR 704-350-7493

1 MR. CASSADA: Your Honor, I'm back to forecast for
2 you the evidence that you'll hear on our economic approach
3 estimating liability.

4 Your Honor, our approach to estimating the number
5 and the amount of valid claims follows the approach that
6 courts take in adjudicating disputed claims pursuant to our
7 adversary system for resolution of disputes. This is
8 precisely what the code requires.

9 Applying state law and taking into account relative
10 evidence, we estimate the amount of probable damages that
11 would be assessed against Garlock, discounted by the
12 likelihood of success. Our merits-based approach thus has two
13 variabilities.

14 First, we estimate the compensatory award share that
15 Garlock might face in cases against it -- in the typical case
16 against it. And we estimate the liability of plaintiff's
17 success. We use those two numbers to estimate what liability
18 Garlock might face.

19 Now we should note, this is not a novel approach,
20 just the opposite. It focuses on the core legal elements of
21 liability, plus relevant evidence.

22 What is novel is what the committee and the futures
23 representative propose to do, which is depart from the rule of
24 law and equate liability with settlement. They urge this
25 approach based on their theory that merit is somehow baked

1 into settlements. I'll show later that this is simply not
2 true. But in any event, their approach would never happen in
3 state or federal court or any court of law.

4 Now from court ordered discovery, we have had access
5 to extensive evidence. In fact, you'll hear that Bates White
6 has constructed the most extensive database in the history of
7 asbestos litigation. Bates White has used all of the data
8 it's collected. In the database and all the evidence gathered
9 therein, it reveals the truth about Garlock's responsibility.
10 And that truth is completely consistent with what you've heard
11 from Mr. Harris about the science.

12 Garlock's claimants had massive exposures to other
13 asbestos products, even though those exposures didn't always
14 appear in the cases against Garlock.

15 In fact, those exposures included exposures to many
16 different products by companies that made amphibole asbestos
17 insulation.

18 The data says that typical claimant against Garlock
19 has exposures -- identified exposures to at least 36 other
20 products produced by other companies.

21 In the science that you heard Mr. Harris describe,
22 shows what this means in comparative terms, that Garlock
23 really is a bucket in the ocean in virtually every case when
24 you consider the number and sources of other exposures.

25 Now this affects both variables in the estimation

1 process. It affects compensatory award share, because in
2 asbestos litigation, the verdicts that plaintiffs get, will be
3 shared among all responsible parties. It also affects the
4 likelihood of plaintiff's success.

5 You'll hear about Garlock's defense in asbestos
6 cases, and that defense focused on showing that under science
7 Garlock's products simply did not release enough asbestos to
8 cause disease, and comparing that with the exposures that
9 folks -- workers who actually came into contact with Garlock's
10 gaskets, what the exposure they suffered from asbestos
11 insulation. That was a very effective defense.

12 And we'll show you that when all of the evidence was
13 in the courtroom, that Garlock won virtually every case. In
14 fact, Garlock won 92 percent of the cases that went to
15 verdict. So the -- when all of the evidence is available, the
16 plaintiff's likelihood of success is no greater than
17 8 percent.

18 Now in applying our merits-based approach, we asked
19 Dr. Bates to make three simple assumptions. First, we asked
20 him to assume that all claimants who allege contact with
21 Garlock's asbestos-containing products, proceed to trial in
22 final judgment.

23 And second, that courts do not exclude claimant's
24 causation evidence under *Daubert* or other rules of evidence.

25 Now you just heard the science, and you know those

1 two assumptions are completely appropriate, because they're
2 actually against Garlock's interest. We think that when the
3 proper rules are applied, very few cases would ever actually
4 make it to a jury against Garlock.

5 The last assumption we asked Dr. Bates to make, is
6 that courts and juries have access to all of the information
7 that plaintiffs or their counsel either have or can reasonably
8 obtain regarding plaintiff's exposures.

9 Now this too is an eminently reasonable assumption.
10 It simply mirrors the discovery obligations imposed on parties
11 and their lawyers on the rules of procedure.

12 Now it also happens to reflect the situation in this
13 estimation case. We've gathered actual evidence in our case
14 about what claimants and their lawyers will eventually say
15 about what caused claimant's diseases. From that evidence we
16 know that claimants will eventually identify 36 separate
17 causes for their diseases; 22 of these will be products that
18 are now part of the trust compensation system; 14 will be
19 defendants in the court system.

20 That's not surprising at all, because the companies
21 that produced the most dangerous products and who really
22 produced all the insulation products, they filed for
23 bankruptcy in the early 2000s, and they've established trusts
24 to assume their liability.

25 Now our estimation approach is a merits-based

1 approach. So as a starting point, Dr. Bates had to consider
2 how juries or how courts would allocate -- that is to
3 Garlock -- under the different state apportionment regimes.

4 So we surveyed every state in the country. We
5 divided the different allocation rules into three different
6 categories. First, pure joint and several liability states.
7 Second, pure several liability states. And finally, there are
8 several states that adopt hybrid rules. You'll see on the map
9 we have here that we divided those up into three categories.
10 Most of them are pure several liability states. In actuality,
11 some of those states do apply hybrid rule. But we think for
12 all effective purposes in our case, those rules don't apply.

13 For example, Texas. The rule in Texas is that
14 parties are only liable for their several share of a
15 plaintiff's damages as determined by jury. But if a jury's
16 determined that a party's at least 50 percent liable, then
17 that party may have joint and several liability of the whole
18 thing.

19 Given that Garlock in a typical case would be one of
20 36 separate causes, those rules have never applied.

21 Dr. Bates then divided the different claimant
22 groups, both pending claims and future claims between the
23 three different liability regimes.

24 The next step was to estimate what the typical
25 plaintiff would receive in terms of a verdict. And to

1 estimate verdicts, Dr. Bates looked at databases that have all
2 the reported verdicts, at least in the literature, and
3 mesothelioma cases. He also looked at verdicts from other
4 databases and other tort context, other wrongful death and
5 personal injury verdicts. He considered all of those. And he
6 will tell you about what conclusions he reached about
7 estimating the verdict.

8 Under Dr. Bates' estimation model, verdict amount
9 can vary by state and claimant personal characteristics.
10 Dr. Bates in his approach takes those into account.

11 So we first focus on the analysis and pure joint and
12 several liability states.

13 Now as the court knows, the liability of reorganized
14 companies and companies in tort, are treated -- in the tort
15 system are treated differently under pure joint and several
16 liability. Trust payments come off of the top of the verdict.
17 Once the trust payments come off of the top of the verdict, the
18 remainder would be allocated among 14 different tort
19 defendants.

20 So Dr. Bates estimated what Garlock's share would be
21 of the remainder of verdicts in joint and several states after
22 application of trust payment.

23 Now note here that there's a very -- there's another
24 very claimant friendly assumption in Dr. Bates' approach, and
25 that is that the remaining share of a verdict after

1 application of trust payments, would be allocated to Garlock
2 on a pro rata basis.

3 So the way that the allocations are actually made in
4 many states, is that a jury determines defendant's various
5 shares and will allocate them in accordance with what the jury
6 determines is the fault of each defendant.

7 Our assumption is that everyone gets treated the
8 same, which again is a very friendly assumption, given the
9 low -- we think -- medically insignificant dose that
10 plaintiffs can get from a Garlock gasket.

11 Dr. Bates then focused on pure several law states.
12 Of course in those states the estimated verdict would be
13 sliced 36 different ways. The trust and the tort defendants
14 are treated the same. So Garlock would bear 1/36th of a
15 verdict in these states.

16 And finally there's several states that follow
17 hybrid rules, and Dr. Bates treated those states differently.
18 Now in these states, California, Texas to name a couple,
19 Courts -- the state law treats economic damages and
20 non-economic damages different.

21 Economic damages are often apportioned in accordance
22 with pure joint and several liability rules. Non-economic
23 damages, pursuant to several liability rules.

24 So in these states, Dr. Bates first had to estimate
25 how damages would be allocated between the economic and

1 non-economic for each verdict.

2 Then for the economic damages, he applied the
3 approach I described earlier. For pure joint and several
4 liability states, deducting the trust settlements first, at
5 least the trust settlements that would be allocated to
6 economic damages, and allocating the remainder 14 different
7 ways. Then of course for non-economic damages, Dr. Bates
8 allocated 1/36th of those damages to Garlock.

9 Having determined or estimated Garlock's potential
10 share of damages and claims, Dr. Bates then discounted those
11 by the plaintiff's likelihood of success. And for this,
12 Dr. Bates determined the likelihood of success was no greater
13 than 8 percent. In fact, he concluded the likelihood of
14 success was less than 8 percent.

15 And there are a number -- you'll hear there are a
16 number of basis for this conclusion. You've heard the
17 science -- you'll hear the science evidence that supports that
18 conclusion. You'll also learn that Garlock, more than most
19 defendants, tried its share of cases, tried its share of
20 mesothelioma and other cases.

21 And during the time period when Garlock had all of
22 the evidence on the table -- as I said earlier, Garlock was
23 extraordinarily successful and won most of the cases that it
24 took all the way to trial. So 8 percent is an appropriate
25 estimate for likelihood of success.

1 And Dr. Bates used econometric principles to
2 actually test that likelihood of success, and determined that
3 if you applied likelihood of success to all claims, that it
4 would actually be much lower than 8 percent.

5 So having discounted the estimated share of
6 judgments, Dr. Bates multiplied those by the number pending
7 claimants who actually alleged contact with Garlock products.
8 And the result was that Dr. Bates estimates that Garlock's
9 actual legal liability for clients would be -- for pending
10 claims, would be less than \$25 million.

11 For future claims Dr. Bates followed the same
12 procedure, only he estimated that the future claims by
13 reference to an incidence model which predicted disease for
14 workers who would have worked with Garlock's gaskets. And he
15 estimated based on Mr. Henshaw's different exposure groups
16 that you heard about from Mr. Harris. The number of claimants
17 within those occupations who would actually come into contact
18 with a Garlock gasket.

19 And applying a formula to the projected future
20 claims, Dr. Bates estimates that Garlock's actual legal
21 liability would be no greater than \$100 million, and therefore
22 the total liability that Garlock, under the Bates analysis,
23 would be that Garlock's liability for claims would be no
24 greater than \$125 million.

25 As the court knows, Garlock has proposed a plan that

1 would provide funding -- total funding of \$270 million on a
2 net present value basis. You'll hear from Dr. Bates about
3 that plan, and how based on Garlock's actual legal liability
4 and the provisions of the plan, that \$270 million is more than
5 sufficient to pay all claims.

6 So that's the approach. It's based on a reliable
7 scientific method. It's based on merit. Based on evidence.
8 And the result is actually what you would expect for a company
9 that produced products that were used in environments where
10 plaintiffs would have experienced massive other exposures and
11 particularly gaskets.

12 So I now turn to the evidence that we'll offer in
13 rebuttal to the settlement approaches that you'll hear from
14 the experts for the committee and futures representative.

15 Now the first noteworthy thing is, they are not
16 estimating the same thing as Dr. Bates. They're estimating
17 what Garlock's future settlements would be. In fact, to be
18 more precise, they're ignoring that the bankruptcy case was
19 ever filed, and they're forecasting settlements in a
20 counter-factual world in which Garlock had never filed for
21 bankruptcy.

22 Dr. Peterson opines that Garlock's future
23 settlements would be approximately \$1.3 billion.
24 Dr. Rabinovitz estimates that Garlock's future settlements
25 would be \$960 million. Now these are astonishing numbers when

1 you consider Garlock's actual history of settling claims. As
2 we'll hear, they both use the same so called calibration
3 period.

4 We'll offer a lot of evidence about the many things
5 that are wrong with their opinions. They do not use a
6 reliable methodology. We filed a motion to exclude their
7 opinions based on *Daubert*. We understand the court will take
8 those under advisement. They make many fundamental data
9 mistakes. In fact they ignore actual data that we collected
10 during the course of the case.

11 For purposes of the next few minutes that I'll be
12 talking about this, I'm only going to focus on two
13 foundational problems that you'll learn about.

14 First, Dr. Peterson and Dr. Rabinovitz, they assume
15 that settlements reflect liability. This contradicts the
16 fundamental tenants of economics that explain why Garlock's
17 settlements in fact were several times higher than its legal
18 liability.

19 Second, they ignore that settlements during their
20 calibration period are particularly inappropriate in its
21 proxy's for liability, because they're inflated by a desire to
22 avoid escalating high cost of trying cases and incomplete
23 factual records, in many cases resulting from evidence
24 suppression.

25 I should begin, Your Honor, by explaining that there

1 is a difference recognized in the law and economics literature
2 between liability and settlements.

3 In fact, this is a formula that first appeared in a
4 famous article, at least famous in some circles, by Richard
5 Posner, where he highlights the difference between settlements
6 and liability. Judge Posner said -- is saying, basically,
7 parties settle cases for reasons other than liability. And
8 you'll see under the formula you'll recognize the first part
9 of it, and that's a debtor's expected liability. That's
10 precisely the formula that we're using in our direct approach
11 to estimating liability. But defense cost and other cost
12 affect settlements greatly.

13 In fact, Dr. Posner or Judge Posner concluded in his
14 article that under the economics of settlement, a defendant
15 will rationally pay or offer as its maximum offer, its
16 expected liability, plus the defense costs that it can avoid
17 by going to trial.

18 Now this does not sound like a very profound
19 conclusion to any lawyer that's ever settled a case. We all
20 know that when we settle cases, we consider the cost of going
21 to trial.

22 In fact, this formula and the intuitive judgment
23 they reflect, is precisely why we have rules that say
24 settlements are not admissible in a court of law to establish
25 the validity or amount of claims. It is one of the reasons we

1 have this rule. Because implicit in the rule is what everyone
2 knows, and that's settlements do not reflect liability.

3 Now this chart depicts or actually shows the
4 information about the average amount that Garlock paid to
5 resolve mesothelioma claims during the 20 years preceding its
6 bankruptcy case.

7 Now I should add the amount you see here is the
8 average amount that Garlock paid to settle cases where it
9 actually made payments. There were a number of cases, a large
10 number of cases were dismissed or resolved without any payment
11 at all.

12 Now what Doctors Rabinovitz and Peterson say, is
13 that in order to estimate Garlock's liability, we got to look
14 at these years, these four or five years right before
15 Garlock's bankruptcy case.

16 And why are we looking at those years? Simply
17 because those are the years closest to the bankruptcy case. I
18 haven't heard any other reason they do that.

19 No analysis regarding why these settlements were the
20 amount that they were, or why it would be reasonable to
21 conclude that those settlements reflect the world that Garlock
22 would be resolving claims in into the future.

23 Now there is a science that predicts human future
24 economic behavior; that science is econometrics. That's the
25 science that Dr. Bates is applying in our merits-based

1 approach. But it can also be applied to predict future
2 settlements. And in fact, Dr. Bates did apply that type of
3 approach when he was estimating Garlock's liability for
4 financial statement purposes.

5 But as I said, you're measuring two different
6 things. And you would naturally expect an estimation of
7 liability in a mass tort case where defendants face very large
8 cost of defense and management of the litigation that they
9 hope to avoid. The cost of settlement is going to exceed the
10 cost of liability.

11 Now, an econometrician before picking a so called
12 calibration period, will look at the entire history of
13 Garlock's settlements. And the first thing you would note is
14 that there's a huge difference between Garlock -- what Garlock
15 was paying in the 1990s, and what Garlock paid in the 2000s.

16 So the first we should ask is, what are the factors
17 that drive those differences? What are the influences that
18 people -- that drove settlements in 1990s? What are they in
19 the 2000s? What changed? Can we expect that change to be a
20 permanent change, or was that a temporary change?

21 That's the analysis that Doctors Peterson and
22 Rabinovitz should have followed in rendering their opinions,
23 and the evidence will show that they did not. And that's one
24 of the things we will focus on during our rebuttal of our
25 case.

1 So what you'll hear and what you've already heard is
2 that beginning in 2000, and extending through 2001, there was
3 a bankruptcy wave. We didn't create the term "bankruptcy
4 wave". In fact, the first place I saw it was from an expert
5 report provided by the committee's expert, Dr. Peterson. That
6 that bankruptcy wave took the nine top tier defendants that
7 you see listed here out of the tort system into bankruptcy.
8 Of course these were the biggest companies out there, and they
9 were paying most of the liability.

10 They were -- just about all were thermal insulation
11 companies. These are the companies described by Mr. Harris
12 when he was showing you the video. These are companies that
13 made highly friable amphibole insulation products. Now there
14 are a couple that didn't, USG produced, principally, a joint
15 compound that was used in filling seams in wallboard. But
16 that was a highly friable product, and they became a popular
17 target for plaintiffs.

18 But most of these cases -- most of these companies
19 produced the really dangerous amphibole insulation products
20 that Dr. Selikoff opined were the causes of mesothelioma.
21 These companies that were paying the most money, they were
22 paying the most clients, they went into bankruptcy.

23 You'll see that when they went into bankruptcy, a
24 whole host of companies were swept up with them.

25 Now their bankruptcies were caused by an avalanche

1 of non-malignant claims brought by people who were not sick.
2 We know now that the vast majority of non-malignant claims
3 were manufactured by plaintiffs' firms and complicit doctors
4 that everyone now understands were fraudulent.

5 In the words of Judge Janice Jack, the diagnosis for
6 these claims were "driven by neither health nor justice, but
7 were manufactured by money".

8 So it was that phenomenon that took most of the
9 compensation for asbestos claims out of the tort system. As
10 you've heard, Garlock itself is victimized by the fraudulent
11 medical screens. Garlock paid almost \$1 billion to resolve
12 several hundred thousands of these claims, a few hundred
13 dollars at a time, several hundred thousand dollars, little
14 cuts at a time that eventually amounted to almost \$1 billion.
15 That's where a lot of Garlock's compensation -- or a lot of
16 the money that Garlock paid in compensation claims went before
17 this bankruptcy case.

18 Now this bankruptcy wave, it describes -- or it
19 provides the reason that Garlock's settlements went up during
20 the 2000s. In fact, there's no serious dispute about the root
21 cause of Garlock's products, the disappearance of the thermal
22 insulation companies. Without these companies, as you've
23 heard, plaintiffs' firms targeted Garlock and other low-dose
24 producers for trial. They demanded that they, "pick up the
25 share of payments lost to the bankruptcy wave."

Laura Andersen, RMR 704-350-7493

1 Now the immediate impact of this is that it
2 increased Garlock's overall cost to defend cases. Garlock was
3 forced to either try more cases or pay higher settlements.
4 Now Garlock rationally paid more to settle claims, because the
5 escalating defense cost which could be avoided, increased the
6 benefits of settlement, even at the higher values.

7 Now, there was also an increase in the actual costs
8 of trying individual claims. As you'll see here, this is data
9 from selected claims that were tried during the earlier
10 period, the 1990s and the later period. And you'll see the
11 gargantuan increase in the amount to actually try a case.
12 This makes clear that these incentives that Garlock had for
13 paying more to settle claims.

14 Now the evidence will show that there was an
15 additional impact of bankruptcy wave, a very disturbing
16 consequence of the wave. That as evidence of thermal
17 insulation exposure decreased, and even disappeared in some
18 cases, many of the plaintiffs' lawyers say now that they
19 "improved their cases against Garlock". But they did so
20 because their clients no longer acknowledged exposures to
21 thermal insulation made by companies that went into
22 bankruptcy.

23 Now the Baron and Budd memo from 1998 shows that
24 plaintiffs recognized early on how they could increase or
25 maximize their claim values, simply by not admitting to

1 evidence of alternative exposures. And you'll see here, this
2 is the Baron and Budd memo. This was a memo that was
3 uncovered in the late 1990s, just before the bankruptcy wave
4 that I described.

5 The memo is quite illuminating and actually
6 confirmed what many defendants expected, because there was a
7 bankruptcy effect before that, it was even before the
8 bankruptcy wave, when some defendants, very prominent
9 defendants introduced products that most plaintiffs would have
10 been exposed to when they disappeared, there was the
11 bankruptcy effect, the evidence disappeared in the tort
12 system. This memo explains why. This is a witness
13 preparation memo.

14 First, it's noteworthy here that in the late '90s,
15 that the Baron and Budd firm identified Garlock as someone
16 that plaintiffs could remember. Garlock made gaskets. And
17 the plaintiffs are admonished to be sure you know the names of
18 all the products listed on the worksheet. Garlock made
19 gaskets.

20 But the memo also instructed witnesses what
21 testimony would maximize the value of their claims. Do not
22 mention product names that are not listed on your work-product
23 sheet. Defense attorneys will jump at the chance to claim
24 asbestos exposure on companies that were not sued in your
25 case. So it's important that you name the right companies and

1 you don't name the other companies, because that would affect
2 your claim and you would be unable to "maximize the value of
3 your claim".

4 Now we'll offer the Baron and Budd memo into
5 evidence, and you'll hear testimony about that. But there's
6 another part of it that's interesting and noteworthy there,
7 and that is that the memo itself shows that plaintiff's
8 lawyers appreciated that they controlled the evidence of
9 exposure. They say at one point that you're going to be
10 sitting across the table from a defense lawyer, but don't
11 worry, they are very young. There's not a thing they can do
12 to refute what you say about what your exposures were in your
13 deposition. In fact, they say, they weren't there. There's
14 not a thing they can do about it. So don't worry about being
15 contradicted.

16 Now let's go back to the -- Judge Posner's formula.
17 With increasing defense costs that Garlock faced, you would
18 expect that the value of a settlement to Garlock would be
19 greater, and so that the cost of settling claims would
20 increase, purely from an increase in Garlock's defense costs
21 that could be avoided by going to trial.

22 Judge Posner's formula, in fact, explains why a
23 company that expects its liability to be zero, might still pay
24 a lot of money to avoid having to take a case to trial.

25 But suppression of evidence has an entirely

1 different and more impactful effect. In fact, when you
2 suppress evidence, it affects all three variables;
3 compensatory award share.

4 Remember how we divided up liability under the
5 different states. If you can make culpable parties disappear,
6 that means that the companies that you're targeting will pay
7 more, and therefore you drive up their expected liability.

8 Likelihood of plaintiff's success. Now remember
9 that Garlock's defenses were very powerful when they could
10 point to the amphibole insulation. And when they could point
11 to the amphibole insulation, juries understood. That's why
12 Garlock had a high success rate. Juries understood that any
13 exposure to Garlock gasket was a bucket in the ocean.

14 But, if Garlock doesn't have the evidence, the ocean
15 becomes a bathtub. So now Garlock is a bucket in a bathtub.
16 And Garlock, although it still won the majority of cases its
17 cases, its defense became marginally less effective.

18 And defense costs, the slide that I showed you
19 earlier of those huge defense cases, those were in cases where
20 Garlock faced the disappearing evidence phenomenon. Because
21 when the plaintiffs weren't admitting that they were exposed
22 to these products, then Garlock had to hire experts and try to
23 take advantage of other rules of discovery to fill in the
24 missing evidence.

25 And you'll hear during the course of the trial that

1 Garlock would hire someone who would be an expert on products
2 used in the Navy, and put those on and the plaintiff's lawyers
3 attacked them saying, well, maybe the products were there, but
4 you can't show that my client actually was exposed -- used or
5 worked around those products. Those experts obviously weren't
6 there and they have to admit that.

7 So in any event, when evidence is suppressed, all
8 three of the factors increased, and the maximum offer that a
9 defendant will rationally make will increase along with it.

10 Now we submit that the evidence will show that these
11 are the factors that drove Garlock's settlements on
12 mesothelioma claims from a few thousand dollars a claim in
13 1990s, to tens of thousands of dollars later during the 2000s.

14 Now Garlock rationally believed that the
15 reorganization of the thermal insulation companies, and the
16 creation of the wealth and trust system to pay claims would
17 provide at least some relief from the disappearing evidence.

18 It was rational to conclude that once the money was
19 put in the trust and became available, the evidence would
20 follow the money.

21 If you look at the bankruptcy cases and the trust
22 distribution procedures in order to collect from a trust, the
23 plaintiff has to show meaningful and credible exposure to the
24 trust product. And surely one would expect that that evidence
25 would be available to defendants in tort system.

1 We see this in Garlock's financial reporting,
2 beginning in -- in EnPro's financial reporting beginning in
3 2004. That this was an expectation of EnPro and it was an
4 expectation of other defendants. And even Dr. Rabinovitz, the
5 claims expert that Mr. Grier has hired to put on evidence in
6 this trial.

7 She opined in an opinion she offered in the ASARCO
8 case, that the recent availability of \$30 billion in new
9 asbestos trust assets, would now place considerable downward
10 pressure on indemnity values. Judge Posner's model shows
11 exactly why that statement is true. This was an opinion that
12 Dr. Rabinovitz gave when hired by attorneys who represented
13 the debtor. This was her opinion in that case.

14 Now what we know now what Dr. Bates will tell you is
15 Garlock did get some relief from the trust. However, in many
16 cases, plaintiffs' lawyers and plaintiffs continued to press
17 Garlock, target Garlock in implausible ways, continued to
18 insist that they had no evidence of exposure to products for
19 which trust would be responsible.

20 Now these stories were implausible, but for reasons
21 I've explained, they were difficult or impossible for Garlock
22 to completely and effectively address, until Garlock could get
23 the actual evidence, which in many cases is controlled by the
24 plaintiff. These practices continue to impose trial risk on
25 Garlock and continue to impose increasing defense cost.

1 Now during the course of this case, actually --
2 this, Your Honor, might be the point where we should close the
3 courtroom, because I'm going to talk about evidence that
4 parties have deemed to be confidential.

5 THE COURT: It seems to me I've seen and heard a lot
6 of this already. Since this is just the opening, why don't we
7 just skip this now. I think I know where you're going with
8 it. I'm going to hear it later, but as evidence. And we're
9 already running a little late. Why don't we just do it that
10 way?

11 MR. CASSADA: Okay. May I confer, Your Honor, for a
12 moment?

13 THE COURT: Yes.
14 (Pause.)

15 MR. CASSADA: Your Honor, I'll proceed however the
16 court wants me to. There was some video testimony that I was
17 going to offer that Your Honor has not seen before, that
18 doesn't go just to the facts of the case, but it shows that
19 these practices that we're complaining about are indeed -- or
20 the conduct we are complaining about, are indeed practices
21 that Garlock would have faced in a systematic way. So we can
22 show that --

23 THE COURT: All right. I'll let you try the case
24 the way you want to.

25 So we'll ask that at this time, ask those who have

1 not signed a confidentiality agreement to leave the courtroom.

2 MR. SWETT: Your Honor, is this an appropriate time
3 for a morning break?

4 THE COURT: I'll ask the staff, are you all ready
5 for a break?

6 Let's -- why don't we take a 10-minute break until
7 11:15. Come back at 11:15 a.m.

8 (A brief recess was taken in the proceedings.)

9 MR. SWETT: Your Honor, there may be people in the
10 courtroom who were not present when you gave the instruction
11 for what is coming so I would ask you to repeat the
12 instruction.

13 THE COURT: Anybody here who has not signed a
14 confidentiality agreement should leave now for the rest of
15 this presentation. And then when we get through this part of
16 it, you all will be welcomed back. Okay.

16 MR. CLODFELTER: Good morning, Your Honor. It's, I
17 think, still morning, and I'm going to be brief, I hope. I
18 have only one point I want to elaborate, and it's a point that
19 Mr. Cassada made, but I think it warrants some expansion.
20 It's perhaps somewhat obvious, but sometimes the obvious is
21 what really needs to be said. And it goes to what we think is
22 the fundamental difference between the approaches that are
23 being taken in this proceeding, and in fact in the whole
24 Chapter 11 case by the debtors and by the committee and by the
25 FCR. And I can boil it down into one sentence. We are in

Laura Andersen, RMR 704-350-7493

1 this court for a reason.

2 Very simply, in the non-bankruptcy processes that we
3 experience with resolving the asbestos tort claims, those
4 processes were unsustainable. They just could not continue.
5 We're here today because the continuation of those
6 unsustainable processes would have benefited no constituency
7 in this case. And the unsustainability of those processes is
8 of importance not just to Garlock and to its other unsecured
9 creditors and to its equity owner whom I represent, but also
10 to those individuals whose asbestos claims have not yet
11 arisen, have not yet been presented, and that will not be the
12 case for many years to come.

13 And so we are here to use the bankruptcy processes
14 and the bankruptcy rules to establish a sustainable process
15 going forward from this point.

16 A sustainable process for resolving claims in the
17 future that will benefit not just Garlock and its owners and
18 other creditors, but also asbestos claimants against Garlock.

19 Coltec is only going to offer one witness in this
20 proceeding, Dr. James Heckman, University of Chicago,
21 econometrician and a recipient of the Nobel prize in
22 economics.

23 Among other things that Dr. Heckman -- commenting on
24 the counter-factual world presented to you by the committee
25 and the FCR, will make the very common sense point that it is

Laura Andersen, RMR 704-350-7493

1 absolutely absurd to project that any company would ever
2 continue to pay an ongoing stream of liabilities that are
3 projected to exceed the present value of its assets, expresses
4 a function of its future operating income. There is simply no
5 economic incentive to continue a losing proposition.

6 We're here in July and we're over three years into
7 the Chapter 11 case. But even now, three years later, the
8 committee and the FCR are still in denial about the
9 proposition that I just stated. They're in denial about the
10 fact that we're here in this courtroom, and not still in the
11 pre-bankruptcy tort process.

12 And the case they will present to you in this
13 estimation proceeding demonstrates their continuing denial of
14 that fundamental fact.

15 Their justification that they will offer for the
16 case that they're going to present and their denial of our
17 being here has shifted somewhat of the course over the last
18 three years.

19 At first the very beginning of the case they were
20 heard to say, well, this is the way you do it, Judge, because
21 this is the way everyone has always done it, and therefore you
22 must do it that way. This is the so called standard
23 methodology for doing claims estimation.

24 That myth was long ago exploited by the briefing of
25 the parties, setting out exactly what actually happened in

1 other Chapter 11 asbestos cases, and how and why estimations
2 were done in those cases, and exactly the way they were done
3 at the time they were done.

4 I won't repeat that here, except to say that all of
5 those cases differ in important ways from the estimation task
6 that you confront.

7 You are not being called upon to do an estimation
8 for the purpose of providing a general validation or cross
9 check for a consensual plan or an agreement already reached
10 among the parties to the case.

11 The task in this proceeding is not being conducted
12 for a discrete or a single purpose, such as to apply as in
13 *Armstrong*, the antidiscrimination rule with respect to the
14 treatment of different classes of creditors.

15 The estimation task that this court confronts will
16 require a more nuanced analysis. It will require findings,
17 and judgments about multiple discrete issues that the parties
18 then take away from this proceeding, formulate their plans for
19 reorganization, to decide the classifications issues and the
20 voting issues, to structure a post-reorganization trust and
21 perhaps to conduct negotiations about all of those topics.

22 A somewhat more refined, but still the same
23 variation of basic theme of the committee and the FCR's
24 contention that you must do what they say because everyone
25 else has done it, then emerged in the following form:

Laura Andersen, RMR 704-350-7493

1 You are required to follow applicable non-bankruptcy
2 tort law in estimating, or for that matter, in actually
3 adjudicating or allowing claims, and therefore you must
4 estimate those claims by replaying in this court, the outcomes
5 that would have been realized in the non-bankruptcy tort
6 system.

7 This version of the case that they will present to
8 you as we have previously argued in our briefing is simply a
9 plain old garden variety *non sequitur*.

10 The substantive principles of state tort law drive
11 the court's estimation, and guide the decision as to whether
12 or not an asserted claim or group of claims, is or is not
13 valid against these debtors. And if they may be valid, in
14 what amount they should be estimated. But that is a very far
15 cry from the proposition that you should use and repeat in
16 this court, the results of the unbalanced processes that
17 occurred in the litigation and resolution of claims in the
18 non-bankruptcy system.

19 It is the point we argued in our brief a year ago,
20 and I won't belabor here.

21 Later on a new and interesting rationale for the
22 committee and the FCR's position emerged. It was articulated
23 by Mr. Swett in the June 27 argument against the debtor's
24 renewed motion under Rule 408 to exclude evidence of
25 prerequisite settlements. It was also repeated by the FCR's

1 expert witness in her deposition and we will likely explore
2 that point further when she testifies. And the thesis goes
3 something like this:

4 In this proceeding, Your Honor really isn't
5 estimating tort liabilities at all. What you are estimating
6 is a set of contract liabilities based on negotiations between
7 Garlock and asbestos claimants. And that's why Garlock's
8 pre-bankruptcy's settlements are determinative of this
9 estimation proceeding.

10 You might, in other words, under this kind of
11 reasoning you might think of the asbestos claimants as sellers
12 of releases, and Garlock as a buyer of releases. That's a
13 very clever theory, Your Honor, but it still rests on the
14 fundamental thesis, the purpose of this proceeding is to
15 replicate the results that would have been realized, had
16 bankruptcy never occur.

17 The analogy though that has emerged in this is
18 actually quite apt, but not for the reason that the committee
19 and the FCR have contended. If you think about markets,
20 economists speak of efficient markets as being ones in which
21 the relative prices at which different products change hands
22 between buyers and sellers, are a reliable measure of their
23 real worth or value to the market participants.

24 Efficient markets are marked by transparency,
25 information about the characteristics of the products being

1 offered, information about the identities of the buyers and
2 sellers, information about the prices at which the products
3 change hands, is known to or known by all participants in real
4 time in the marketplace.

5 Efficient markets exhibit consistently applied rules
6 of operation that do not favor one group of sellers over
7 another, or one group of buyers over another, or buyers that
8 were sellers or vice versa.

9 Most, if not all efficient markets have a traffic
10 cop or a regulator to ensure that transparency and consistent
11 application of trading rules in the market are observed by all
12 participants, and exclude or discipline any variations or
13 departures from those rules.

14 In a highly efficient market, buying and selling
15 asbestos claim releases, the question of whether the price of
16 the thing and its true value that are negotiated in the
17 marketplace does not rise. Whether those are different does
18 not rise.

19 But the asbestos claiming and claims resolution
20 markets, to use the ACC's analogy and the expert's analogy
21 that existed outside bankruptcy, are as the debtors have
22 demonstrated throughout the case and will demonstrate further
23 in this proceeding, notoriously inefficient markets that have
24 historically been characterized by wide and shifting
25 disparities in the availability of information among the

1 market participants, large inequities in bargaining power
2 among the participants based upon control of that information
3 and those disparities, inconsistently applied rules of conduct
4 that vary from jurisdiction to jurisdiction, and historical
5 disruptions that have caused wide price swings in the prices
6 offered and paid for those asbestos releases.

7 Most notable examples that you're well familiar with
8 are the early flood of mass screen non-malignant claims that
9 flooded the market and later were withdrawn from the market.

10 In such inefficient claim buying and selling
11 markets, one cannot have confidence that the prices negotiated
12 between buyers and sellers are reliable indicator of the true
13 value participants could place on the products being traded.

14 The whole point of this Chapter 11 case is to return
15 to a more efficient, and as I said at the beginning,
16 sustainable market that fairly treats debtors and creditors
17 alike.

18 One in which information is freely available, and is
19 exchanged among the release buyers and the release sellers in
20 which there are no information distortions; in which
21 transaction costs for buying and selling are minimized; and in
22 which there are clearly stated and equitably applied rules for
23 how the market will function, backed up by the force of the
24 court. That's the whole goal of a plan of reorganization.
25 And it is why the future market for the resolution of asbestos

1 claims against Garlock cannot and will not simply be a
2 repetition of the past.

3 So if then Garlock's pre-bankruptcy settlements are
4 not dispositive in this estimation proceeding, what exactly do
5 they mean? And here Your Honor is going to be called upon to
6 unbake the cake.

7 On the question of what they do mean, the
8 settlements, pre-bankruptcy, the parties will debate for the
9 next three weeks on the relative extent to which the
10 pre-bankruptcy settlements were an amalgam of Garlock's legal
11 liability if it had taken cases to trial with complete
12 information, and applying proper rules of substantive tort
13 law, versus the extent to which those settlements were
14 reflective of Garlock's avoided costs of litigation trial.

15 The committee and the FCR have contended throughout
16 this case that these two ingredients, the evidence concerning
17 the actual liability, and the cost of defense are baked into,
18 that's their phrase, and you've heard it before from
19 Mr. Cassada, are baked into the settlements so you don't
20 really need to worry about it any further yourself.

21 They may be baked in, but the heart of the case that
22 you have in the next three weeks is the relative weight to be
23 assigned to those two major ingredients that were baked into
24 the settlements, actual liability and avoided litigation
25 costs.

1 That matters greatly to the outcome of this
2 proceeding, because the avoided litigation cost element of
3 that baked cake is necessarily going to be very different in
4 the future in this case, and under a plan of reorganization,
5 than it was before bankruptcy was filed.

6 It will not be possible for Your Honor to estimate
7 the way in which those differences should affect your
8 estimation ruling, unless the court first understands how, and
9 in what ways, and in what measure those two elements, legal
10 liability and avoided litigation costs were baked into the
11 settlement cake in the first place.

12 Garlock's evidence will show, as Mr. Cassada has
13 said, that when properly modeled by valid econometric
14 methodology, over 90 percent of Garlock's pre-bankruptcy
15 settlement payments reflected a value of zero on the liability
16 side, under applicable state substantive tort law.

17 And for that reason, over 90 percent of the present
18 anticipated future claims against Garlock should likewise be
19 estimated to have a zero value, for purposes of determining
20 whether they are valid claims that would be allowable if
21 adjudicated to conclusion in those cases.

22 To demonstrate the correctness of this proposition
23 under controlling non-bankruptcy law, Garlock's evidence will
24 demonstrate the scientific and legal basis for the proposition
25 the merits case Mr. Harris described to you and that you will

1 hear further about, that case will support and serve to
2 validate the conclusions of Garlock's econometric experts be
3 demonstrating that Garlock's econometric estimation of its
4 present and future liabilities is fully consistent with and
5 supported by applicable non-bankruptcy tort law governing the
6 validity of claims.

7 So to recap my one and only point this morning,
8 Garlock is here in this court because the goal of this Chapter
9 11 case is to strip away the extraneous factors that go into
10 negotiating settlements in the tort system, and to obtain an
11 estimation of its actual liabilities under applicable
12 substantive law.

13 With that estimation in hand, the parties can then
14 craft a reorganization proposal that is equitable among
15 claimants holding different types of claims against the
16 debtors, equitable as between present claimants and future
17 claimants, and equitable as between asbestos claimants and all
18 other constituencies holding claims against Garlock. That is
19 the sole purpose and goal of this proceeding and these cases.

20 If instead the goal is to reproduce in this
21 proceeding and in this case what would have happened to
22 Garlock outside bankruptcy, then this proceeding and the
23 entire Chapter 11 case is pointless.

24 Thank you, Your Honor.

25 THE COURT: Mr. Guy, are you going to go first --

1 MR. GUY: I am, Your Honor.

2 THE COURT: Are you going to go first for your side?
3 Okay. Good.

4 MR. GUY: It's now good afternoon, Your Honor, at
5 least by my watch.

6 What was supposed to be an hour and a half became
7 two hours and 20 minutes. I fear that we're going to have a
8 repeat of that. But for our purposes, the FCR's purposes --

9 THE COURT: You'll only have eight days of it.

10 MR. GUY: That's right, Your Honor. It all adds up.
11 We'll keep track.

12 Your Honor, Jonathan Guy for the Future Claimants
13 Representative, Joseph Grier, III.

14 Your Honor, I know what we're here today to do,
15 because Your Honor told me. It's in your order. We're here
16 today to start a process so we can calculate the aggregate
17 amount of money that Garlock will require to satisfy present
18 and future mesothelioma claims, not non-malignant claims. We
19 heard from Mr. Cassada about all the perils of non-malignant
20 claims.

21 But we're here today to calculate the aggregate
22 amount for the future mesothelioma claims. And we're here to
23 do that in the real world, not an idealized world. How do I
24 know that we're here to do that, because it's in your order,
25 Your Honor. That's what we have tried to do in preparing for

1 this case.

2 Why do we need that estimate? We need that estimate
3 to determine the feasibility of the debtor's plan, and the
4 anticipated plan of the ACC or the FCR.

5 For our part, Your Honor, we have delayed in filing
6 our plan for the simple reason that we want the results of
7 this hearing to be incorporated in that plan.

8 Your Honor, we're not here to allow any individual
9 claim or group of claims. Your Honor knows and recognizes in
10 your order that we can't do that as a practical matter.
11 There's something like 4,300 pending claims. There's too many
12 of them, and the estates of the claimants have their rights,
13 their jury trial rights under 28 U.S.C. 1441, to pursue their
14 wrongful death claims.

15 Your Honor, I don't say wrongful death claims
16 lightly. Because anyone who had a mesothelioma claim at the
17 beginning of this case against Garlock is now dead.

18 Mr. Grier's constituency are the 20,000 plus
19 claimants that will arise in the future. There appears to be
20 an agreement amongst the parties, because of their reliance
21 upon the Nicholson model and various variations of that. But
22 there will be tens of thousands of claims against Garlock.
23 Garlock of course disputes the merits of the claims, but they
24 don't really dispute there will be tens of thousands of them.

25 Your Honor, the Court and parties are going to look

1 to the estimate that comes out of this hearing to determine
2 whether their plans are feasible or not, but also whether
3 they're fair and equitable, whether they satisfy the absolute
4 priority rule, and whether critically from EnPro's
5 prospective, whether the plans will garner at least 75 percent
6 of the votes of asbestos claims, to obtain the special
7 injunctive relief under 524(g).

8 In other words, everyone is looking at this estimate
9 to determine whether a party's plan can be confirmed or not.
10 That's the end game Your Honor, confirmation. That's our
11 focus.

12 Your Honor, as part of that confirmation process,
13 the debtors chose Mr. Grier. The ACC didn't choose Mr. Grier.
14 The debtors chose Mr. Grier. And they chose him to be an
15 independent fiduciary for future claims, one who's
16 unaffiliated with any group. An individual known to the court
17 and this community. Those that knew that Mr. Grier would
18 fulfill his duties to future claimants with integrity and
19 fairness.

20 Our firm which was recommended to Mr. Grier, is not
21 affiliated with any particular group. I was counsel for
22 Shook and Fletcher a debtor just like Garlock, that
23 reorganized. I also acted as counsel for Cooper Industries, a
24 co-defendant of Garlock's. The same is true of
25 Dr. Rabinovitz, Your Honor. For 40 years of her professional

Laura Andersen, RMR 704-350-7493

1 career she has acted as an expert in numerous cases, going
2 back to A.H. Robins and before. She's acted for courts, she's
3 represented debtors, you saw that from Mr. Cassada's
4 presentation, insurer's solvent companies and fiduciaries like
5 the FCR.

6 Why do I raise that in the opening, Your Honor? For
7 the very simple reason that we do not come to this case with
8 any particular ideology, any particular prejudice, or any
9 vested interest. We certainly don't come to this case with
10 any view of what the right number should be. We're not
11 picking a number and then trying to justify it.

12 Your Honor, in asking what is fair and equitable to
13 future claimants, we have to ask, in fact we have no choice
14 but to ask, what present claimants were paid when the merits
15 of their cases were analyzed and weighed by both parties, by
16 both adversaries. What were they paid in that situation?

17 And in Garlock's case, that happened in two
18 different situations; trial, settlement; 99.7 percent of their
19 cases they settled. That was their choice, Your Honor. That
20 was their protocol.

21 We do not ask what present claimants were paid in an
22 idealized world that can never be tested. Whether it be one
23 posited by Garlock or one posited by the plaintiffs. We asked
24 how did the real world value the claims of mesothelioma
25 victims when they were presented in state courts under state

1 law across the country. How were they resolved, and at what
2 value.

3 Your Honor, over the next three weeks you're going
4 to hear a great deal of testimony as to the merit and
5 otherwise of Garlock's defenses to mesothelioma claims.

6 You have heard from Mr. Harris, Garlock's very
7 capable defense counsel, that it's impossible to contract
8 mesothelioma from Garlock's products. And in every instance,
9 anybody who has mesothelioma, who may have worked around
10 Garlock products, got it from someone else's product. You
11 will hear from Mr. Harris why those defenses were successful
12 at trial. You will also hear from the ACC and Mr. Finch as to
13 why they were not.

14 But the reality is, regardless of the strength or
15 weaknesses of those defenses, Garlock faced significant trial
16 risk. We can even see that from the demonstratives that were
17 shown earlier. Eight percent of the time when they had all
18 the information available to them, they lost. That's a
19 significant trial risk. You only have no trial risk when you
20 never lose.

21 And they knew that trial risk, Your Honor, increased
22 substantially when co-defendants filed for bankruptcy. That's
23 a reality that's obvious to everyone in this courtroom. If
24 there are fewer people in the courtroom, your trial risk
25 increases.

1 Your Honor, they assessed that risk in the period
2 before their bankruptcy. They considered the strength and
3 weaknesses of their defenses, and they settled their potential
4 liability at trial in nearly every instance.

5 In a five year timeframe, 12,000 claims, Your Honor,
6 going back to the beginning of their mesothelioma cases, we're
7 talking about 26,000 claims. That's the data that we rely
8 upon, Your Honor. We have to rely upon that data because
9 that's real world data. That is a very robust database.

10 Your Honor, and in those settlements, critically,
11 Garlock asked for exposure evidence. They didn't just write a
12 check to anybody who turned up. They wanted to know that
13 there was exposure to their products.

14 And when they settled, Your Honor, equally
15 critically, they never paid any other company's share. They
16 settled their share. And critically in those settlements,
17 Your Honor, they never said, despite all you've heard about
18 those 15 settlements, in the thousands of settlements they
19 never said, represent whose products you were exposed to.
20 They had the ability to do that. They didn't do it, Your
21 Honor, because they didn't attach importance to it, because
22 they were settling their responsibility fully understanding
23 that in every instance there would be exposure to other
24 companies' products, because it was the nature of the location
25 of Garlock's products. They're in industrial settings. There

1 will be other products, always, around anyone who's working on
2 a Garlock gasket in an industrial setting.

3 In the end, Your Honor, what they've paid to resolve
4 claims, Mr. Clodfelter is right, they paid a market price.
5 Where he's wrong is that the information was available to
6 them. They knew about the science. They knew about the state
7 of the law. They knew about exposures to other companies'
8 products. That's the real world, not an idealized world.

9 Your Honor, from that real world we can reasonably
10 and reliably project an aggregate number that Garlock would
11 need to satisfy present and future mesothelioma claims.
12 That's what Dr. Rabinovitz did here.

13 We have two witnesses, Your Honor, you will be
14 pleased to know, Dr. Rabinovitz and Mr. Radecki who assisted
15 her in discount rate calculations.

16 Your Honor, Dr. Rabinovitz uses an accepted and
17 established methodology that relies upon observable data,
18 Garlock's data. She asked for and was given Garlock's
19 database. Garlock updated that database in May 2011, Your
20 Honor, in the middle of the bankruptcy case. She relied upon
21 that updated database. They never subsequently updated it.
22 That's what she used, and she used that database from 12,000
23 claims that Garlock either dismissed, tried to jury, or
24 settled. From that data she calculated a forecast of the
25 range of approximately \$1.3 billion, including defense costs,

Laura Andersen, RMR 704-350-7493

1 Your Honor.

2 How do we know from that database, that that
3 database represented thousands and thousands of individual
4 occasions where the debtors considered the merits of claims
5 and valued them? How do we know that, Your Honor? We know
6 that because they said so.

7 In 2006 in their 10-K, which was issued December of
8 2006, this is what they said about their settlements. I don't
9 know whether you can read that easily, Your Honor, but we'll
10 certainly get you a copy. I believe copies have been
11 previously submitted as attachments to our papers. But this
12 is what they say.

13 Settlements are made without any admission of
14 liability.

15 Yes, of course. That's standard. But that doesn't
16 mean the settlement doesn't resolve their potential liability,
17 otherwise why would you settle?

18 Now, what do they take into account when they
19 settle?

20 Settlement amounts vary depending upon a number of
21 factors, including the jurisdiction where the action was
22 brought, the nature and extent of the disease alleged, and the
23 associated medical evidence, the age and occupation of the
24 plaintiff, the presence or absence of other possible causes of
25 the plaintiff's alleged illness. Note, the presence or

1 absence of other possible causes of the plaintiff's alleged
2 illness. Alternative sources of payment available to the
3 plaintiff.

4 That would be bankrupt defendants and solvent
5 defendants. The availability of legal defenses. Those are
6 the defenses you're going to hear about ad nauseam, Your
7 Honor. They know how strong their defenses are, Your Honor.
8 They believe passionately in their defenses. They weighed the
9 strength of those defenses when they settled, and whether the
10 action is an individual one or part of a group.

11 Your Honor, if their defenses were weaker, they
12 would have paid more.

13 Now, this is key, and these are not the words of any
14 expert, Your Honor. These are the words from EnPro's 10-K.

15 "Before any payment on a settled claim is made, the
16 claimant is required to submit a medical report acceptable to
17 Garlock" -- acceptable to Garlock -- "substantiating the
18 asbestos-related illness, and meeting specific criteria of
19 disability. In addition, sworn testimony or other testimony that
20 the claimant worked with or around Garlock asbestos-containing
21 products is required. The claimant is also required to sign a
22 full and unconditional release of Garlock and its affiliates."

23 No one else, just Garlock. Your Honor -- I
24 apologize, it's difficult to read.

25 Your Honor, Dr. Bates uses those numbers to forecast

1 what would be paid in the future. The very thing that you
2 asked us to do, make a reasonable and reliable estimate of the
3 aggregate amount of money that Garlock will require to satisfy
4 present and future mesothelioma claims.

5 Dr. Bates, the debtor's expert did just that.
6 Using, as Mr. Cassada said, econometrics and reliable
7 principles.

8 Critically, Your Honor, when EnPro did that for
9 Garlock, they say, "we focus on future cash flows to prepare
10 our estimate. We make assumptions about declining future
11 asbestos spending based on past trends, publicly available
12 epidemiological data, current agreements with plaintiff firms,
13 and our judgment about the current and future litigation
14 department; the availability of claims of other payment
15 sources; both co-defendants and 524(g) trusts."

16 Your Honor, in 2006, they're doing exactly what we
17 should do. They're doing it. They've done it. The input and
18 insight provided to us by Bates White. And then they say, we
19 adjust our estimate when current and future cash flow results
20 and long trends suggest that the targets cannot be met or will
21 be significantly exceeded.

22 As a result, we have a process that we believe
23 produces the best, their words, Your Honor, the best estimate
24 of future liability for the 10-year time period within the
25 Bates range.

Laura Andersen, RMR 704-350-7493

1 Just 10 years, Your Honor, not to 2053 which is what
2 we're doing here, just 10 years.

3 What was that number, Your Honor? Remember this is
4 their number, and you know that they're going to be not
5 rushing to the biggest number -- \$561 million, not including
6 defense costs. At the bottom there it says, conceding that
7 this is not a perfect estimate, no one can make a perfect
8 estimate in the world of asbestos. Scenarios continue to
9 exist that could result in a total estimated liability for
10 Garlock in excess of 1 billion.

11 Your Honor, Mr. Cassada said that Dr. Rabinovitz's
12 number of 960 million, not including defense costs, was
13 astonishing; astonishing. This is EnPro's estimate, 1
14 billion. I don't think it's so astonishing when the other
15 party in the case was almost at the same number.

16 Your Honor, these are not the only times they
17 estimated their asbestos liabilities. In 2004 they did
18 internal estimates. Mr. Magee, who we have the greatest
19 respect for, signed off on those estimates. He estimated the
20 number to be in the range of 1.14 billion under certain
21 scenarios. That's the liability for other open claims, and
22 just five years of probable future claims.

23 Your Honor, lest you think that the number changed
24 dramatically in their 10-K from March 2010, again, they
25 reiterate the number could be \$1 billion.

1 "Scenarios continue to exist that could result in
2 total future asbestos related expenditures for Garlock of
3 \$1 billion."

4 And Your Honor, when they internally calculated the
5 number for the timeframe that is relevant for us, which is
6 when everybody thinks there will be no more mesothelioma
7 claims because of Garlock's products, using fairly respected
8 incidence models out through the 2050 range. Your Honor, when
9 they calculated that number internally, and they came up with
10 different scenarios, I freely concede that. They came up with
11 a number of \$1.27 billion.

12 Those are the estimates that Mr. Magee prepared that
13 we had the big fight about earlier, Your Honor.

14 Your Honor, these were merit based estimates,
15 because they were based upon claims that were paid when they
16 considered the merits of those claims. And they priced them
17 accordingly in their discussions with the other party. They
18 were estimates that were done internally, when there was no
19 need for advocacy. They were estimates that were done in
20 securities filings where there was every need to have strict
21 disclosures grounded in reality.

22 Now, we're in bankruptcy. In bankruptcy we depart
23 to an idealized world. Garlock says, and Coltec says, well,
24 on the merits we have no liability; zero. No one could ever
25 get sick from our products. We have zero liability to the

1 26,000 potential claims against us.

2 What they really should be saying in this courtroom,
3 if they were true to that, Your Honor, please estimate our
4 liability at nothing. But they're not comfortable with that
5 number. Because it's such a radical departure from reality.

6 So it says, while Dr. Bates has come up with this
7 model, where every claim -- every claimant, all 26,000
8 claimants go to verdict at no cost to Garlock, and only a tiny
9 percentage win, and those that win, by the way, they share
10 with 36 other co-defendants. It's a perfect world, Your
11 Honor. If you were to take 26,000 claims to verdict, it would
12 cost billions and billions and billions of dollars.

13 But after that process Dr. Bates says, he thinks the
14 number is 125 million. But the debtors aren't really
15 comfortable with that number either. They say, well, we
16 actually think 270 is the right number. We put 270 in our
17 plan, and you, Your Honor, and Mr. Grier my client, we can be
18 comfortable that that's enough. Don't worry, it's enough.
19 Please believe that this number makes our plan feasible.
20 Please believe this number makes our plan fair and equitable
21 to future claimants.

22 Remember, Your Honor, we don't come to this case
23 with a number. All we care about is future claimants are
24 treated fairly and equitably looking at what was paid in the
25 past.

Laura Andersen, RMR 704-350-7493

1 Claimants, Your Honor, will not accept values
2 post-petition that radically depart from the numbers they
3 accepted when the merits were considered between the parties
4 prepetition.

5 And how can it be that on June 4th, the day before
6 Garlock filed for bankruptcy, by its own calculations, their
7 asbestos liabilities were potentially in excess of \$1 billion.
8 The day after June 5th, suddenly the number's \$125 million.

9 Your Honor, in the end, Garlock's post-petition
10 idealized numbers are just-in plug numbers that preserve
11 equity. Your Honor, I represented debtors. I fully
12 understand the desire to preserve equity. But if they truly
13 believe the number is zero, they shouldn't be here. If they
14 truly believe the number is \$125 million they shouldn't be
15 here. And if they truly believe the number is \$270 million,
16 they shouldn't be here.

17 Now, put aside all this about, well now we want you,
18 Your Honor, to rewrite state laws, rewrite the tort system,
19 come up with a better model, come up with a new model for
20 resolving asbestos claims.

21 The reality is, the debtors know under the model
22 that we all have to live with, flawed or not, they're
23 insolvent. They know that, Your Honor. That's why they're
24 here.

25 Your Honor, how do I say that with confidence?

Laura Andersen, RMR 704-350-7493

1 Because I've read the affidavit of Mr. Pomeroy, the
2 first day affidavit. He was very careful to not say that the
3 company was insolvent. But the words that he uses tell a
4 different picture. This is from June 5th, 2010, 3 years ago.
5 Mr. Pomeroy says the debtors are not in business distress, but
6 overwhelmed by the financial institutional costs of defending
7 and resolving tens of thousands of asbestos claims in state
8 and federal courts across the country.

9 Continuing on he says, Garlock believed until
10 recently it would survive the bankruptcy wave, because most of
11 the major asbestos manufacturers had emerged from bankruptcy
12 by funding post-confirmation trusts.

13 Your Honor, Mr. Cassada highlighted a statement from
14 our expert, Dr. Rabinovitz, who I'm confident you're going to
15 find is a truly independent expert. She did believe that
16 those monies would make a difference. Nothing speaks to her
17 independence more than the fact that she was articulating that
18 belief in 2007. But it didn't happen.

19 Your Honor, paragraph 19 they say, Mr. Pomeroy says,
20 the cash flows necessary to defend and resolve asbestos claims
21 in this tort system threaten to deplete rapidly, both
22 remaining insurance available to Garlock for such claims and
23 Garlock's cash flow from operations. Without Chapter 11
24 protection, the value of the debtors' core businesses and the
25 debtors' ability to compete effectively in the marketplace

1 will be irrevocably damaged.

2 So that's the reality, Your Honor. The reality we
3 have is, the debtors settled thousands and thousands of
4 mesothelioma claims. They settled those claims asking for
5 exposure evidence, understanding the merits and strengths and
6 weaknesses of their defenses. Understanding the reality of
7 the tort system. Understanding what disclosure was required
8 in the state courts where these claims were being brought.
9 Understanding what claims could be brought against the trusts
10 and against solvent defendants. They understood all of that,
11 Your Honor. Because the plaintiffs didn't change, 1995
12 pipefitter; 2005 pipefitter. That pipefitter has the same
13 exposure to the same types of products. No one in this
14 courtroom would disavow that statement, Your Honor.

15 Your Honor, EnPro only has equity value in an
16 idealized world that doesn't exist and could never exist.

17 It doesn't believe its own numbers. Because if it
18 did, it wouldn't be here. It is here because it knows if it
19 dismisses this case, it won't survive. But the path urged by
20 Garlock takes us nowhere. A \$270 million plan will not be
21 accepted by current claimants. They will not get the 524(g)
22 protection they want. And to the extent Garlock wants to fund
23 a plan under its theory that every case goes to trial, it
24 hasn't put enough money on the table, and it doesn't have that
25 kind of money.

Laura Andersen, RMR 704-350-7493

1 Your Honor, when you hear all the testimony over the
2 next three weeks, fact testimony, the expert testimony, I
3 would ask that you ask yourself, if I appointed an expert,
4 which you have the right to do under Rule 706, if you had
5 appointed your own independent expert to answer your question,
6 the aggregate amount of money that Garlock will require to
7 satisfy present and future mesothelioma claims. Would you
8 find it credible if that expert said the number was
9 \$125 million, when the day before its bankruptcy that expert's
10 client was estimating the number in excess of \$1 billion,
11 using that same expert's methodology?

12 Your Honor, in conclusion, we urge the court to
13 estimate the amount after you've heard all the evidence, to
14 satisfy present and future mesothelioma claims by the
15 reference to the amount that Garlock itself paid to satisfy
16 such claims, and put Garlock on a path to confirmation.

17 Thank you, Your Honor.

18 THE COURT: It's 12:30, why don't we break for
19 lunch.

20 MR. SWETT: That's fine, Your Honor.

21 THE COURT: How long do you want to take? I realize
22 that there's a lot goes on during the trial besides the eating
23 of lunch. We'll take an hour and a half or an hour?

24 MR. CASSADA: Well, I'll speak for our side, Your
25 Honor. We are prepared to move forward quickly. We're having

1 box lunches brought in. We're going to eat here. We'll be
2 ready to go, a half hour or at the earliest time that the
3 court is available.

4 MR. SWETT: Your Honor, we would suggest a one hour
5 lunch break.

6 THE COURT: Okay. Let's just come back at 1:30.
7 (Lunch recess.)

8 * * * * *
9 UNITED STATES DISTRICT COURT
10 WESTERN DISTRICT OF NORTH CAROLINA
11 CERTIFICATE OF REPORTER

12 I, Laura Andersen, Official Court Reporter, certify
13 that the foregoing transcript is a true and correct transcript
14 of the proceedings taken and transcribed by me to the best of
15 my ability.

16 Dated this the 22nd day of July, 2013.

17 s/Laura Andersen
18 Laura Andersen, RMR
19 Official Court Reporter
20
21
22
23
24
25

Laura Andersen, RMR 704-350-7493